

**In The Matter Of:**  
*Octavio Rodriguez Cira, et al. v.*  
*County of Henry, et al.*

---

*William A. Lowe, DBA*  
*June 28, 2022*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

OCTAVIO RODRIGUEZ CIRA           )  
and FABIOLA MERLOS                )  
MARTINEZ, as Surviving            )  
Parents of FERNANDO               )  
OCTAVIO RODRIGUEZ,                )  
Deceased, and OCTAVIO             )  
RODRIGUEZ as                        )  
Administrator of the                )  
Estate of FERNANDO                )  
OCTAVIO RODRIGUEZ,                )  
Plaintiffs,                            )  
  ) CASE NO. 1:21-CV-01999-VMC  
vs.                                        )  
  )  
COUNTY OF HENRY,                 )  
OFFICER ROBERT P.                  )  
BUTERA, In his                        )  
Individual and Official             )  
Capacity, and OFFICER              )  
QUINTON C. PHILLIPS, In            )  
his Individual and                    )  
Official Capacity,                    )  
Defendants.                            )

Deposition of WILLIAM A. LOWE, DBA, taken on  
behalf of the Defendants, pursuant to the  
stipulations agreed to herein, before  
Mary K. Caldwell, Certified Court Reporter,  
at the offices of Pate, Johnson & Church,  
101 Marietta Street, Suite 3300, Atlanta,  
Georgia, on the 28th day of June,  
2022, commencing at the hour of 10:55 a.m.

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13 (Original Exhibits 1 and 2 were attached to original  
14 transcript.)

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17 - - -

18  
19  
20 (Pursuant to Article 10.B of the Rules and  
21 Regulations of the Board of Court Reporting of  
22 the Judicial Council of Georgia, the court  
23 reporter disclosure statement is tendered at  
24 the end of the transcript.)  
25

1           MR. WILLIAMS: This will be the  
2 deposition of William A. Lowe, and it's  
3 taken pursuant to agreement of counsel and I  
4 think by Notice.

5           I propose that all objections to the  
6 questions be reserved except those going to  
7 the form of the question or responsiveness  
8 of the answer, if that's agreeable.

9           MR. JOHNSON: No objection.

10          MR. WILLIAMS: If you'll swear the  
11 witness in, please.

12          THE WITNESS: May I stand up?

13          COURT REPORTER: Sure.

14          THE WITNESS: Yeah. I just think it's  
15 that important.

16          COURT REPORTER: Thank you. Do you  
17 swear or affirm that the testimony you're  
18 about to give will be the truth, the whole  
19 truth, and nothing but the truth, so help  
20 you God?

21          THE WITNESS: So help me God.

22                   WILLIAM A. LOWE,  
23 having been first duly sworn, was examined and  
24 testified as follows:

25   /   /   /

## EXAMINATION

BY MR. WILLIAMS:

Q Would you state your full legal name for the record, please.

A William Alton, A-L-T-O-N (spelling), Lowe, L-O-W-E (spelling).

Q Dr. Lowe, is it?

A Yes.

Q Okay. I may mis -- if I don't address you that way, please don't --

A I go by Bill. That's fine.

Q -- think that's disrespect, but --

So, Dr. Lowe, we just met. I'm Terry Williams. I represent the Henry County officers in Henry County who are Defendants in this action. And I'm going to be asking you questions because you've been identified as a person who may offer expert opinions in this case on behalf of the Plaintiff.

Have you ever given a deposition before?

A I have.

Q Okay. So you're somewhat familiar with the process, but, just as a reminder, it's a question-and-answer session that the court reporter is taking down; so we need to try not to talk over each other, if possible.

1           Also, if you can answer verbally rather  
2   than just nodding and shaking the head when I ask  
3   you questions, that will help get a clean record.

4           A     Understood, sir.

5           Q     Otherwise --

6           The only other thing is, if you respond to  
7   the question, we're going to assume you understood  
8   it and responded accordingly, unless you say  
9   otherwise.

10           If you have any concerns about a question,  
11   please let me know; and I'll try to repeat it or  
12   rephrase it or whatever to help us communicate.

13           A     Thank you.

14           Q     Any time you want to take a break, let me  
15   know. I'm happy to accommodate you in that, as long  
16   as there's no question that's pending.

17           A     Understood.

18           Q     And you've been identified as a person, as  
19   I mentioned, who is prepared to offer expert  
20   opinions in this case.

21           And you actually provided an Expert  
22   Witness Report that was disclosed in the discovery  
23   process.

24           Is that right?

25           A     Correct.

1 Q All right. You drafted a report.

2 Did you prepare the report yourself?

3 A I did.

4 Q Okay. So you actually typed it in and  
5 prepared it and provided it to Plaintiffs' counsel?

6 A Yes.

7 Q Okay. Were there any drafts that you had  
8 that were revised because of information that you  
9 got either through Plaintiffs' counsel or through  
10 other evidence once you prepared it?

11 A Yes. There were several drafts.

12 Q Any significant changes that you recall?

13 A The only sig --

14 The only addition is, I think that  
15 information was obtained during discovery about  
16 Henry County's use-of-force policies that I did not  
17 have when I did my original draft. That came back  
18 maybe just a few months ago that I was given those  
19 use-of-force policies and, I believe, revised the  
20 report to reflect that.

21 Q And the revised report then was provided  
22 on May 16th, 2022?

23 Is that correct?

24 A May I look at my copy?

25 Q Yes, please, if you've got a copy.



1           A     May 16th.  Yes, sir.

2           Q     Okay.  And in our Notice of Deposition, we  
3 asked for you to bring all the materials that you  
4 relied upon and prepared and notes or anything like  
5 that.

6                     Do you have all those materials?

7           A     I brought most of -- most of them.  I was  
8 not told to bring everything that I referred to.

9           Q     Okay.  How about notes and things?  
10 Because we all hopefully have the same documents  
11 pretty much, and I will go through the list of what  
12 you reviewed.

13                    But did you prepare notes, summaries,  
14 things in your own handwriting or typewritten?

15           A     I put some Post-It notes on some of the --  
16 like, the police officers' POST profiles.

17           Q     Just highlighting testimony and different  
18 things?

19           A     Yes, I mean, you know, how many times --  
20 for example, how many times Officer A may have had  
21 CPR training or use-of-force or TASER.

22           Q     Did you prepare any notes separately?  I  
23 mean, sometimes I see witnesses that will review  
24 things, and they'll do summaries or notes and  
25 things.

1                   Did you prepare anything like that?

2           A       I just reviewed my Expert Witness Report  
3 several times and watched the video several times.

4           Q       So once you reviewed things, watching  
5 video, reviewing things, you just type in? You just  
6 start preparing your report?

7                   Is that the way you did it?

8           A       That's how I did the initial draft. Yes,  
9 sir.

10          Q       Okay.

11          A       I would literally look at it frame by  
12 frame and try to do it chronologically.

13          Q       Do you still have a copy of the initial  
14 draft?

15          A       I have a copy of all the drafts. I don't  
16 have hard copies with me, but --

17          Q       Okay. Can you provide us with copies of  
18 those?

19          A       Yes.

20          Q       Okay.

21                   MR. WILLIAMS: And you can provide  
22 them --

23                   MR. JOHNSON: And I can get those to  
24 you, yes.

25                   MR. WILLIAMS: I appreciate that.

1 BY MR. WILLIAMS:

2 Q Okay. So I'm not going to introduce a  
3 copy of this in the record since we already have it,  
4 no use in more copies; right?

5 What I want to know from Dr. Lowe is:  
6 Does the report, as it is now written as of  
7 May 16th, 2022, contain all the materials that  
8 you've reviewed and relied upon and all of your  
9 opinions that you expect to offer in the case?

10 A Yes.

11 Q The Curriculum Vitae that is attached to  
12 it, is it fairly current?

13 A Yes.

14 Q Okay. So there's nothing that you would  
15 now change or revise in any way in your report as of  
16 May 16th, 2022?

17 A No.

18 Q So you've given extensive materials  
19 attached to your report, and along with a C.V.; so  
20 I'm not going to go through that. Most of that is  
21 clear.

22 Just to sort of highlight, you were  
23 employed as a firefighter/EMT/paramedic with Clayton  
24 County for 32 years; correct?

25 A Yes, sir.

1 Q Retired in August 2011?

2 A Yes, sir.

3 Q Then in 2008 you attended the police  
4 academy, I noticed in your C.V.

5 Did you become POST-certified as a peace  
6 officer then?

7 A Not at --

8 May 2008 is when I started my police  
9 training. And I believe we graduated in November,  
10 so I would have been POST-certified when the  
11 graduation took place.

12 Q Toward the end of 2008?

13 A Yes. I believe --

14 Q And --

15 A I believe it was November 2008 is when I  
16 became POST-certified as an officer.

17 Q And at that point you were already,  
18 obviously, certified as a paramedic/EMT. You had  
19 all the various certifications of a medic and all  
20 the way up the line to the top; right?

21 A Fire officer, HAZMAT technician.

22 Q Right. I saw all that in your C.V.

23 So did you decide to go to the police  
24 academy so you could become an armed tactical medic?

25 A My boss, who was the deputy fire chief,

1 wanted me to go to the police academy more than I  
2 wanted to go. So he was a great boss, and so I was  
3 happy to -- it was one of the few things he asked me  
4 to do that he asked several times, because it's a  
5 big commitment to go to the police academy.

6 Q Um-hum.

7 A And so he was a good boss. I was happy to  
8 go.

9 And my goal -- my role with Clayton County  
10 Fire Department, going to the police academy was so  
11 that I could become a member of the tactical medic  
12 program where you have armed, deputized and sworn  
13 law enforcement officers who carry bullets and  
14 Band-Aids. I mean, we would -- we would train with  
15 the SWAT team for both Clayton County Police and the  
16 Clayton County Sheriff's Office. And when they  
17 deployed on a SWAT call-out, we would go with them.

18 In fact, when I reported to the police  
19 department -- I'm sorry. When I reported to the  
20 Fire Department wearing my Battalion Chief's  
21 uniform, I had a sheriff's uniform and a police  
22 uniform, as well.

23 Q Right, because, as I noted in your report  
24 and C.V., you became a part-time deputy with Clayton  
25 County Sheriff's Office in 2011 through sometime in

1 2012?

2 A Yes, sir.

3 Q All right. But also in 2009 you were  
4 hired as a part-time reserve officer by the City of  
5 Roswell Police Department; right?

6 A Yes, sir.

7 Q Okay. So after you became an armed  
8 tactical medic, did you ever have any occasions  
9 where you went to a scene and you had to treat  
10 someone who had been injured by the Clayton County  
11 SWAT teams?

12 You said that you worked both for the  
13 Police Department and the Sheriff's Office in that  
14 regard; correct?

15 A Yes, sir.

16 Q Did you ever have the occasion to treat a  
17 suspect detainee who had been injured through a use  
18 of force?

19 A On occasion. I don't remember any  
20 specific examples. But it was not unusual during a  
21 SWAT raid that one of the SWAT officers would hurt  
22 his foot or his arm or the suspect would be  
23 pepper-sprayed, so we would have to decontaminate  
24 him and treat him.

25 Nothing particularly comes to mind. I

1 don't recall anybody ever being shot when I was  
2 present as a tactical medic.

3 Q What about treating a detainee after the  
4 detainee was tasered? Did you ever have occasion to  
5 treat and deal with examining someone after they  
6 were exposed by a TASER?

7 A Many, many times, not only as an officer  
8 but also as an instructor, too, as a TASER  
9 instructor.

10 Q And after someone had been exposed to a  
11 Conducted Energy Weapon, commonly known as TASER,  
12 what would you be looking for in examining and  
13 possibly treating that person?

14 A Well, the first thing goes back to the  
15 basics, airway breathing circulation, make sure that  
16 their airway is open and that they're breathing  
17 sufficiently to oxygenate their body; and also make  
18 sure that their pulse rate is stable, not too slow,  
19 not too fast.

20 So that's where it starts at just --

21 Q Would the TASER use have any bearing on  
22 their airways being open or not?

23 A Not generally, no.

24 Q So I know from other matters that I've  
25 been involved in, a lot of times the EMS will -- the

1   medics will remove the TASER probes as one of the  
2   things. Some departments do the -- have the  
3   officers do that and some want to have EMS do it.

4               Is that something you also did?

5           A     I did.

6           Q     Okay. Did you ever have the occasion,  
7   that you can recall, to examine a detainee who had  
8   been exposed to electricity through a TASER who had  
9   become unconscious or seemed to be still  
10   experiencing the effects of the TASER?

11          A     I don't recall an incident where I ever  
12   had anyone who suffered from a TASER exposure that  
13   was unconscious. I don't remember having either  
14   observed it as a paramedic or as a law enforcement  
15   officer, somebody who was unresponsive from a TASER.

16          Q     Right. Yeah. And my question wasn't very  
17   well framed, but that's what I was wanting to know.

18               Have you ever had to sort of revive  
19   someone who had been tasered and by accounts had  
20   become unconscious or unresponsive after the use of  
21   the TASER?

22          A     And I'm just pausing here for a second  
23   trying to reflect upon my long career doing this,  
24   because many times, as the Fire Department Battalion  
25   Chief, I may show up and observe my paramedics doing



1 it, but I didn't do it.

2 Q Okay.

3 A But I don't recall a patient that ever had  
4 to be resuscitated from a TASER deployment.

5 Q Okay. You became a part-time reserve  
6 officer with the City of Roswell in October 2009,  
7 and then you became a full-time officer with them  
8 after you retired from Clayton County in 2012?

9 Is that right?

10 A So the way it worked is, is I retired from  
11 the Fire Department in August of 2011. I went to  
12 work for Sheriff Kimbrough immediately until he was  
13 defeated in his run for reelection. And then --

14 So once I retired from the Fire Department  
15 and resigned from the Sheriff's Office, during that  
16 time I was still a part-time police officer with  
17 Roswell. But once I retire -- once I resigned from  
18 the Sheriff's Office, then I went to work for  
19 Roswell full-time. They created a new position just  
20 for me.

21 Q And who was the Chief of Police when you  
22 went to work at City of Roswell?

23 A Ed Williams.

24 Q Is he still the Chief of Police?

25 A He is not. He's been retired ten years

1 maybe.

2 Q Who's the Chief of Police now?

3 A Oh. Conway -- Conroy.

4 Q Did he take over after Williams retired?

5 A There were two chiefs in between. We had  
6 Dwayne Orrick, and then Rusty Grant, and then Chief  
7 Conroy.

8 Q Dwayne Orrick?

9 A Orrick.

10 Q O-R-R-I-C-K (spelling)?

11 A O-R-R-I-C-K (spelling), yes.

12 Q And who was after Dwayne Orrick?

13 A Rusty Grant.

14 Q And then the one you mentioned. All  
15 right. Okay.

16 You related in your report and C.V. that  
17 you became TASER training certified in 2010;  
18 correct?

19 A Yes.

20 Q And that was in connection with you being  
21 a armed tactical medic?

22 A Yes.

23 Q And then you indicate you became an  
24 instructor in 2011.

25 So, obviously, you took the course and

1     went through the certification process that  
2     TASER-Axon requires to become a certified trainer?

3             A     Correct.

4             Q     Okay. Do you recall who your instructor  
5     was in that program to become a TASER instructor?

6             A     I can see his face, but I don't remember  
7     his name.

8             Q     What academy did you go to or what  
9     location did you go to get that?

10            A     So the instructor course was taught at the  
11    Roswell Police Department, and TASER provided the  
12    master instructor who taught the instructor course.

13            Q     So Axon, A-X-O-N (spelling), provided the  
14    instructor for that?

15            A     Yes. And so multiple officers from  
16    different agencies would attend, because once TASER  
17    sponsored the instructor course, then they would  
18    post it on their website and agencies would send  
19    other instructors. So some of them were Roswell.  
20    Some of them were from various departments.

21            Q     Right. And that was in 2011?

22            A     Yes.

23            Q     Okay. In the field, how many times did  
24    you deploy a TASER on a subject, either a person  
25    that you had to deal with in some manner or on

1     behalf of some officers involved in an incident?

2           A     So I personally tased four suspects and  
3     one Pit Bull dog.

4           Q     And were all --

5                     So tell me about each one of those and  
6     where you were employed and what the circumstances  
7     were.

8           A     Well, they would have -- all have been  
9     with Roswell Police. I didn't -- I was never issued  
10    or carried a TASER in my capacity with Clayton  
11    County.

12          Q     Okay. Even though you were trained and  
13    certified on it at the time?

14          A     I was trained and certified on it, but --

15          Q     It was more --

16                     Because you were working part-time with  
17    City of Roswell at the same time.

18                     Is that right?

19          A     That's right.

20          Q     When you worked at the City of Roswell,  
21    did you carry a TASER after you were certified?

22          A     When we did the instructor class in 2010,  
23    that's when Roswell first rolled out the tasers,  
24    because we had a new chief, Chief Orrick.

25          Q     Um-hum.

1           A     He was -- he was an advocate for tasers,  
2     so that's why Roswell had the instructor training.  
3     And I was one of the instructors. I was picked for  
4     that, to be part of the TASER instructor contract.

5           Q     When did you start carrying one yourself  
6     when you were on duty as an officer?

7           A     When the policy went into effect.

8                     There was a delay between when we had the  
9     TASER instructor course and for the policy to get  
10    approved. I don't remember the date that the policy  
11    was approved, but --

12          Q     Sometime after you became an instructor in  
13    2011?

14          A     Oh, yeah. It was just maybe a few weeks,  
15    maybe a month or so. It wasn't long. In fact --

16                     In fact, I was the first officer in  
17    Roswell to tase someone. And it kind of became a  
18    surprise because -- and I say that because the  
19    policy went into effect on, like, a Friday  
20    afternoon. And I was working on the weekend, and so  
21    I had the opportunity to tase someone who was  
22    violent with law enforcement after a domestic  
23    violence. And so I tased them. And they put it in  
24    the shift report for that 12-hour shift that an  
25    officer tased someone.

1           Well, the chief read it over the weekend  
2   in his email. And he didn't think the policy went  
3   into effect -- he didn't think the classes started  
4   for the officers until Monday, but he didn't  
5   realize -- because the training sergeant said, since  
6   you've had the class, as soon as the policy goes in  
7   effect, when the chief signs it, you can carry your  
8   TASER. But the chief didn't realize that officers  
9   were doing that, so no big deal.

10          Q     Um-hum. So tell me the circumstances  
11   about that, the incident you were just describing.

12          A     Yeah. So he was a very large Hispanic  
13   male. He had had a physical altercation with his  
14   wife, I believe, in the presence of their children.  
15   And the officers had made a determination they were  
16   going to arrest him for domestic violence, battery.  
17   I don't remember the charges.

18                But I arrived as one of the backup  
19   officers. And when they tried to take him into  
20   custody, he became very combative; so I deployed my  
21   TASER. And I did a drive stun where I take the  
22   TASER cartridge off the end of it, because there  
23   were four or five officers in a pile on the ground  
24   trying to get him handcuffed. And I didn't want to  
25   take a chance on firing the TASER with the probes

1 and, perhaps, hitting another officer; so I took the  
2 TASER cartridge off the end of it and then turned  
3 the TASER on and drive-stunned him in his leg.

4 Q How many times?

5 A Just one time. I mean, it was a  
6 five-second ride, but it was the window of  
7 opportunity the officers who were trying to handcuff  
8 him needed to get him in -- to get him in handcuffs.

9 Q So you used it for pain compliance?

10 A Well, when you're doing drive stun, that's  
11 all you're getting is pain.

12 Q Right.

13 A It's a distraction method.

14 Q Right.

15 A It tingles a tad bit.

16 Q Yeah. I've had it done before just to see  
17 what it was like. It's an interesting experience.

18 A It's the longest five seconds of your  
19 life.

20 Q I just had them do it in drive stun for a  
21 second on my leg.

22 So tell me about the second occasion.

23 A And I'm hesitating here because I'm just  
24 trying to remember it. It's not something I had  
25 refreshed my memory on in anticipation for this.

1           Q     Um-hum.

2           A     One of them was in March -- so this won't  
3 be chronological. But one of them was in, I  
4 believe, March of 2019, is I received -- I was  
5 dispatched to a auto accident in a private apartment  
6 complex. It was in the parking lot of an apartment  
7 complex. And the caller reported that somebody had  
8 intentionally run into his vehicle head-on in the  
9 parking lot, and the person appeared to be under the  
10 influence or -- and was being combative or  
11 difficult.

12                     And I was literally just around the corner  
13 and arrived within about 45 seconds. And so when my  
14 police SUV pulled up, the person who had caused the  
15 wreck, who was the one that was being reported as  
16 difficult, saw me and started walking away. And  
17 he's ignoring my commands to stop. And I'm giving  
18 loud commands, you're under arrest, you're under  
19 arrest. I've alerted back that I need backup and to  
20 have my backup step it up or to get here sooner  
21 rather than later.

22                     And at some point -- I guess we had walked  
23 maybe a hundred yards. And at some point he turned  
24 around and faced me, so I pointed my TASER X2 at  
25 him. And he immediately -- he followed commands and



1 got on -- got on the ground and put his hands out to  
2 his side.

3 I'm alert -- dispatch is -- we call it  
4 Signal 89. They're checking on my welfare, you  
5 know. Two delta two is my rad -- might have been my  
6 radio number, Signal 89; and I would say okay.

7 So we're literally just standing -- I'm  
8 standing there pointing the TASER at him. He's  
9 laying on the ground. And it's a static scene. And  
10 I can hear the sirens coming from the other  
11 officers.

12 So there's no need for me to make physical  
13 contact with him because we've got a static  
14 situation. I'm prepared to wait. And I'm happy  
15 with the situation where he seems to be compliant.

16 Well, at some point he took his left hand  
17 and shoved it in his front pants pocket, and I began  
18 to give him commands to take his hand out -- and he  
19 made some -- he made -- or that I was going to tase  
20 him. And at some point he yelled out, well, go  
21 ahead and tase me; and so I did. I deployed one  
22 probe -- one cartridge, two probes, to his upper  
23 back. I got good neuromuscular incapacitation.

24 And then once the five seconds of TASER  
25 energy was over with, I gave him commands to lay on

1 the ground and -- or to stay on his stomach and put  
2 his hands out to the side; and he did. And maybe  
3 15 seconds later another officer ran up, and we  
4 handcuffed him. And that was the end of that.

5 Q So one deployment, one trigger pull,  
6 five seconds?

7 A Yes.

8 Q And it achieved neuromuscular  
9 incapacitation for --

10 A Very much so.

11 Q -- a period of time?

12 It was successful, in your view?

13 A Yes. Oh, absolutely. And it was ruled as  
14 a good use of force.

15 Q Where did the prongs strike the person in  
16 their bod -- his body?

17 A So it was on the right side of his upper  
18 back, one just on the scapula and then one just  
19 above the waist. I had maybe a two-foot probe  
20 spread.

21 Q So he was already in the prone position?

22 A Yes. He was laying facedown, prone.

23 Q And he was laying facedown in the prone  
24 position when he put his hand in his pocket?

25 A He put his left hand in his pants pocket,

1 his front pants pocket.

2 Q Okay. Did you ever find out, did he have  
3 anything in his pocket that he was trying to get to?

4 A There was no pistol or knife or --  
5 I don't remember what he had in his  
6 pocket.

7 Q Do you recall that person's name, by  
8 chance?

9 A I mean, I have the record, but I don't  
10 know his name. I don't remember his name.

11 Q And you said that was in 2019?

12 A Yes, I believe March of 2019.

13 Q So how long had been -- had the subject  
14 been in the facedown prone position before you used  
15 the TASER on him?

16 A Oh, maybe 45 seconds or 60 seconds. It  
17 wasn't very long. I mean, from the time I asked  
18 other officers to hurry up, we walked approximately  
19 the length of a football field. And then when he  
20 turned to face me -- because I was gaining ground on  
21 him. I was closing the gap between us. And I was  
22 giving him instructions of you're making it worse,  
23 stop walking away. And at some point he turned  
24 around and faced me, and that's when I went -- I  
25 display -- I showed him my TASER and pointed it at

1 him, gave him -- and as soon as I gave the commands  
2 to get on the ground, he did and --

3 Q And then how long after tasing did he stay  
4 in this prone position on the ground?

5 A A relatively short period of time, and I  
6 don't know, because once the other officer got there  
7 and handcuffed him, I just -- I just stepped away  
8 because, I mean, I had -- it had been pretty  
9 intensely -- there was -- there was a lot of  
10 intensity of the stress. So once another officer  
11 showed up and put him in handcuffs, that's when I  
12 told everyone they could slow down, the subject has  
13 been detained. And I vaguely remember just  
14 walking -- just walking off to kind of just  
15 decompress.

16 Q Do you know who the other officers were  
17 who responded?

18 A Well, Sean Thompson was the one who put  
19 handcuffs on him. And that's S-E-A-N (spelling)  
20 Thompson. And he's still there. He's a detective.

21 Q All right. You mentioned four, so  
22 we're -- that's two.

23 Do you remember another one?

24 A And I guess part of the challenge I have  
25 recovering here on the spot is, I've just done so

1 many TASER deployments in training and watching  
2 videos, it's --

3 Q That's fine. If you don't recall the  
4 details of them, that's fine.

5 A The only other one I recall is when I  
6 tased the Pit Bull dog.

7 Q Okay. I don't blame you for that. When  
8 you're in a situation with a Pit Bull dog, that may  
9 be definitely the best way to handle it.

10 In the other occasions that you -- you  
11 don't recall the details, but did you have to ever  
12 deploy the TASER more than one occasion on a trigger  
13 pull? Deploy the TASER in more than one trigger  
14 pull on an occasion is a better way to put that.

15 A I don't ever recalling [sic] having fired  
16 the TASER more than one time on one person.

17 Q Do you recall each time that you used it,  
18 that you had good contact, whether it was probe or  
19 drive stun, to deliver the electrical charge?

20 A I don't remember not having any issues  
21 with the TASER, sir.

22 Q Okay. Do you recall any of the persons on  
23 whom you used the TASER having any health  
24 conditions, any physical problems as a result of  
25 your use of the TASER?

1           A     No.

2           Q     Were there any complaints made against you  
3 regarding the use of the TASER -- your use of the  
4 TASER on any of those occasions?

5           A     Are you talking, like, maybe an official  
6 complaint with the department?

7           Q     Yes, or --

8           A     No. I mean, I'm sure they complained to  
9 the sergeant that they didn't like being tased,  
10 but --

11          Q     But nothing filed, no disciplinary  
12 inquiry, anything of that nature?

13          A     No, not with tasers, no.

14          Q     Okay. Have you ever had any occasion in  
15 which a complaint was filed against you and there  
16 was, you know, an investigation into it?

17          A     Several.

18          Q     Okay.

19          A     Many. Sever -- well, I say several.

20                Yeah. There were a few.

21          Q     Okay. Well, tell me about those. And I  
22 want to know about complaints regarding use of  
23 force, not some other, like, arrest or rude behavior  
24 or anything like that. I'm talking just use of  
25 force.

1           A       I had no complaints regarding use of  
2 force.

3           Q       Okay.

4           A       I had demeanor complaints where I was -- I  
5 wasn't polite or they shouldn't have gotten the  
6 ticket, but there were no allegations of excessive  
7 force.

8           Q       All right. And that's with any department  
9 that you've been with as far as in your law  
10 enforcement capacity, no complaints regarding use of  
11 force?

12          A       No one has --

13                   No citizen has ever accused me of use  
14 of -- mis -- or using excessive force.

15          Q       How about any other officers or  
16 supervisor?

17          A       No.

18          Q       Have you ever had to restrain a detainee  
19 on any occasion in which the detainee was not being  
20 compliant, was physically struggling, by putting  
21 body-weight pressure on them to hold them down?

22          A       I may very well have put body-weight  
23 pressure on them to get them in the handcuffs, but  
24 then it came off.

25          Q       As far as putting body-weight pressure on

1 a detainee, is it ordinary police practice, if you  
2 are trying to arrest someone and you need to get  
3 them on the ground, to put them on a prone position  
4 initially to exercise better control and exercise  
5 control safely?

6 A The preference is to get them prone,  
7 facedown, so that you can get their hands behind  
8 their back.

9 Q So that's pretty much basic law  
10 enforcement procedure; correct?

11 A Yes.

12 Q And acceptable and has been that way for  
13 many years?

14 A Yes, absolutely. And, of course, as we've  
15 seen since George Floyd, you know, expectations both  
16 within law enforcement and within society, you know,  
17 things are being reevaluated, and they should be.

18 Q And it has been a common police practice  
19 for many years that if a subject is resisting  
20 physically during that process of when they're put  
21 on the prone position and they're being handcuffed,  
22 to place a knee, perhaps, or some body weight on  
23 their back to sort of hold them down and get  
24 control.

25 Is that true?



1           A     I think a better statement, if I may, sir,  
2     is that you may very well put your knee on their  
3     shoulder because your knee has got to go somewhere.  
4     You've got to be close enough to be able to  
5     manipulate their arms.

6           Q     Right.

7           A     And so maybe, yes, but --

8                     There may be occasions where you would put  
9     a knee on their shoulder or on their buttocks or  
10    something like that for a short period of time --  
11    for a brief period of time to get the handcuffs in  
12    place.

13          Q     And it's been an acceptable practice by  
14    police officers and police departments for many  
15    years to use that type of body weight, either from a  
16    knee or maybe even a hand, if you have one  
17    available, to hold the suspect while that process of  
18    handcuffing is taking place?

19          A     Agreed.

20          Q     And would you agree, too, that that  
21    process of using body weight to control a suspect  
22    may continue longer if the suspect is resisting and  
23    not being compliant with the handcuffing or being  
24    still and not flailing about?

25          A     And what I would tell you is, is officers

1 have to constantly evaluate what is the level of  
2 resistance the person is offering at this moment  
3 versus the amount of restraint that has been  
4 applied.

5 And I would say that if the handcuffs have  
6 been applied, then I would expect officers would use  
7 less body weight because they've got some degree of  
8 compliance.

9 I mean, the person is going to be very  
10 limited to what they may be able to do if their  
11 hands are -- their hands are restrained, so that's  
12 two weapon system -- two personal weapon systems  
13 that the officers don't have to be concerned about  
14 anymore because his hands are handcuffed.

15 Q Okay. So do you ever recall a specific  
16 incident where you had to restrain a detainee who  
17 was physically resisting and being combative by  
18 putting a knee on the subject's back -- upper back  
19 during the handcuffing process or even after the  
20 handcuffing was completed?

21 A I don't recall a specific incident. Do I  
22 believe at some point during my service -- because  
23 the only people I ever arrested was when I was a  
24 Roswell police officer.

25 But when -- with people I arrested who

1 became combative in Roswell, would there have been  
2 an occasion where I put -- would have put a knee on  
3 their shoulder or their buttocks to handcuff them?  
4 I'm sure that happened.

5 Q Over the years you were employed with the  
6 City of Roswell Police Department, how many --  
7 approximately how many arrests did you make?

8 A Well, I know in one --

9 If I had to guess, it would -- 1,800 to  
10 2,000, just me coming up with a number. I was very,  
11 very proactive.

12 Q And were you basically a patrol officer  
13 the entire time you were with Roswell?

14 A I spent some time in the traffic unit.  
15 And when I was in the traffic unit, I had a hybrid  
16 position; so half my workweek was devoted to traffic  
17 and half my workweek was devoted to training  
18 officers. And then that -- the schedule changed, so  
19 then I became --

20 But most of my time with Roswell, I was a  
21 uniform patrol officer, but I was very proactive.  
22 They use -- they -- I'm sorry.

23 Q When you say "very proactive," I take it  
24 from the context you're referring to making  
25 arrests -- doing investigations, making arrests --

1           A     Yes.

2           Q     -- as compared to other officers?

3           A     They use to publish the statis -- the  
4     department use to publish statistics of officers'  
5     activities. And when they were doing that, in  
6     almost every category -- I don't remember if it was  
7     monthly or quarterly, but I was always at the top of  
8     traffic stops, drug arrests, custodial arrests. I  
9     was very proactive.

10          Q     Did you ever have the occasion to have to  
11     detain or arrest a naked individual?

12          A     None of them come to mind. But I've seen  
13     lots of naked people during my public safety career,  
14     so I'm sure some of them were at Roswell.

15          Q     But you don't recall ever having to  
16     actually detain or arrest, meaning you've got to get  
17     hands on and arrest -- and handcuff this person  
18     who's naked?

19          A     I'm sure it happened, but I don't have a  
20     particular --

21                 And, see, part of the problem is, is, you  
22     know, it all blends into just this -- you know, what  
23     have I done for 11 years and 3 months at Roswell.

24                 But was there a naked person that I had to  
25     arrest because they took their clothes off for

1     whatever? I'm sure that happened. I'm confident it  
2     did, but I can't tell you where and when.

3             Q     Do you ever recall having to arrest a  
4     naked person walking down the street at night?

5             A     Well, I generally worked days, so I'm sure  
6     I didn't arrest any -- I would -- it would be  
7     unlikely I would have done any at night.

8                     But it is something that I dealt with as a  
9     paramedic. So I've seen lots of naked people, some  
10    inside their house, some outside their house, who  
11    needed help.

12            Q     Did you have any occasion where a naked  
13    person you tried to arrest or needed to arrest had  
14    become combative and you had to go hands-on with  
15    controlling them, getting compliance?

16            A     I'm sure that happened.

17            Q     You can't recall any specific occasion?

18            A     I don't recall a specific occasion. No,  
19    sir.

20            Q     Would you agree that dealing with a naked  
21    person presents special challenges in terms of  
22    trying to get control over them?

23            A     It does. It does.

24            Q     And if you --

25                     Are you familiar with any studies that

1 show that a naked person encountered by police is  
2 four times more likely to become violent in the  
3 encounter?

4 A I would not dispute that.

5 Q And that would likely be because whatever  
6 caused the person to become naked in public, since  
7 he was walking down the street, has probably  
8 influenced their behavior; correct?

9 A It's the totality of the person that we  
10 find at 2:00 o'clock in the morning who's naked  
11 walking down the street. There's a lot going on  
12 within their -- within their body and in their mind.  
13 They're clearly -- they're in conflict.

14 Q They're clearly not normal. They're  
15 either under the influence of drugs or emotionally  
16 or mentally disturbed; correct?

17 A Or all of the above, no doubt.

18 Q Okay. All right.

19 A But if I could just add this, Terry.

20 Q Yeah. Sure.

21 A Okay.

22 Q Sorry.

23 A Law enforcement doesn't get to pick the  
24 people we come in contact when we get a 9-1-1 call.  
25 And whether they're in a three-piece suit or whether

1 they're naked, the responsibility is exactly the  
2 same.

3 Q I'm trying to find --

4 You have your copy of your report; right?

5 A I do, sir.

6 Q Can you tell me where the list of the  
7 materials that you reviewed is?

8 A It is on Page 4, sir.

9 Q Page 4. All right. It was. I overlooked  
10 it.

11 A At the bottom.

12 Q Ah. Okay. So on page -- starting on  
13 Page 4 of your report and going through page -- over  
14 to Page 5, you list the documents and resources you  
15 consulted and reviewed; correct?

16 A Yes.

17 Q Is that extensive? That's -- that covers  
18 everything that you reviewed or consulted?

19 A Yes.

20 Q You listed a number of things that you  
21 noted provided the officers at the scene with  
22 probable cause to detain Ferdinand [sic] Rodriguez;  
23 correct?

24 Let me go there. It's on --

25 A So it's on Page 15, Terry.

1           Q     15? Yeah. And looking at all those --  
2 and I appreciate that -- I believe you are  
3 correct -- you would agree that there was certainly  
4 probable cause to detain and even arrest Fernando  
5 Rodriguez during this incident?

6           A     Yes. He had committed crim -- he had  
7 committed violations of the Georgia Criminal Code.

8           Q     Okay. And when Officer Quinton Phillips  
9 from the Henry County Police Department arrived at  
10 the scene, he was responding to calls for assistant  
11 by -- assistance by the City of Hampton officers;  
12 correct?

13          A     Yes.

14          Q     And he was aware that they had attempted  
15 to detain someone and the suspect was being  
16 combative; correct?

17          A     I don't know what Officer Phillips was  
18 aware of. I haven't heard any radio traffic. I  
19 mean, I would imagine as soon as he did his  
20 windshield assessment when he pulled up, he could  
21 see that, you know, there was some activity around  
22 somebody laying on the ground; so, I mean, he  
23 probably reached that conclusion pretty quickly.

24          Q     He certainly knew, from the radio traffic  
25 that you did review, that officers needed



1 assistance --

2 A Yes.

3 Q -- with a suspect they were trying to  
4 detain?

5 A Yes.

6 Q And when he arrived at the scene, as you  
7 mentioned, when he first pulled up, through the  
8 windshield and when he got out, he observed  
9 Rodriguez naked in the street and saw the Henry --  
10 saw the Hampton police officers giving him commands;  
11 correct?

12 A Yes.

13 Q And he saw that he was ignoring the  
14 officers' commands and trying to get away.

15 He was moving backwards in his crab-crawl  
16 position when Phillips was approached; correct?

17 A Yes.

18 Q Okay. And that certainly provided  
19 Officer Phillips with justification to try to  
20 restrain Ferdinand [sic] Rodriguez; correct?

21 MR. JOHNSON: If I can interject, his  
22 name is Fernando, just to be clear.

23 MR. WILLIAMS: What did I say?

24 MR. JOHNSON: Ferdinand.

25 MR. WILLIAMS: I thought I said

1 Fernan -- okay. I'm sorry. Yeah.

2 Fernando.

3 MR. JOHNSON: Also, the line of  
4 questions, it's -- these are all leading  
5 questions.

6 Can we cut back on the leading  
7 questions just a bit?

8 MR. WILLIAMS: I am allowed to lead.  
9 Why would I not be allowed to lead?

10 MR. JOHNSON: You have him on direct,  
11 and you're testifying for him.

12 MR. WILLIAMS: Yeah, but he's your  
13 witness, so --

14 MR. JOHNSON: Okay.

15 MR. WILLIAMS: Yeah. I mean --

16 BY MR. WILLIAMS:

17 Q Do you understand my question, subject to  
18 that objection?

19 A Will you repeat it, please?

20 MR. WILLIAMS: Can you repeat that?

21 (Thereupon, the designated  
22 portion was read back by the  
23 court reporter.)

24 MR. WILLIAMS: Fernando Rodriguez.

25 A And I would say no.

1 BY MR. WILLIAMS:

2 Q You don't think, based on all the things  
3 we just discussed in these prior questions, that  
4 Officer Phillips would have justification to  
5 restrain -- to attempt to restrain Fernando  
6 Rodriguez?

7 A No.

8 Q Why not?

9 A There's three officers there who have been  
10 dealing with Fernando. He just shows up, and he's  
11 immediately going to come up and take a leadership  
12 role and determine that, hey, even though I've only  
13 been on the scene for 20 seconds walking from my car  
14 door to this, all of a sudden I'm going to decide  
15 that I'm the person, that this is the time to arrest  
16 him.

17 I would be looking at one of the senior  
18 officers for Hampton and saying, what's the plan,  
19 what's the strategy, where are we at.

20 I mean, there was no compelling urgency  
21 whether -- it wouldn't have taken but a second for  
22 Phillips to say, what's the plan, what have we got  
23 here.

24 Q Well, in fact, he didn't immediately --

25 I was just asking you that question, that

1 ultimately that would have given him the right to do  
2 that should he choose to do so.

3 But he didn't actually come up immediately  
4 and start trying to restrain him himself; correct?

5 A And I would say he's there as a backup  
6 officer to support the Hampton officers and --

7 Q Right. And, in fact, the Hampton officers  
8 asked him if he would assist them in restraining  
9 Fernando Rodriguez once he arrived at the scene, I  
10 mean physically to their location; correct?

11 A And that's different. And that's when  
12 they -- the four of them made the decision, now that  
13 we've got four officers here, let's get him in  
14 handcuffs. And so, yes, but --

15 Q And you agree that when they were making  
16 that decision, Rodriguez was still moving and was  
17 still not compliant; correct?

18 A He was -- he was not compliant. He  
19 clearly wanted to be somewhere else and he was  
20 doing -- yes.

21 Q And it was appropriate for them to try to  
22 restrain him, get him under control, since he was  
23 still naked in the middle of the street posing a  
24 danger to himself and to others; correct?

25 A I believe --

1           My opinion is at some point Fernando was  
2 going to have to be placed in handcuffs. And the  
3 officers made a decision that this is the time to do  
4 it, we've got four officers here and let's get him  
5 into custody now.

6           One of my principles is, if you know you  
7 have to arrest someone, the sooner you get them in  
8 handcuffs, generally the better it is. Now, you may  
9 pause or delay for a advantage, such as having more  
10 officers there, and that's a good strategy.

11          Q     All right. Which is apparently what the  
12 Hampton officers did.

13           They were waiting for other officers to  
14 arrive so they could all go on and try to restrain  
15 this fellow; correct?

16          A     Yes.

17          Q     Yeah. And you noted in your report a  
18 number of times that Officer Marcus Stroud with the  
19 Hampton Police Department was in control of the  
20 scene, sort of the officer giving orders and giving  
21 directions to the officers that were with City of  
22 Hampton, and even when Phillips arrived; correct?

23          A     The Incident Report -- the City of Hampton  
24 Incident Report said -- or one of the detectives'  
25 reports said that Stroud was the officer in

1 charge --

2 Q Right.

3 A -- of the Hampton officers.

4 Q And you saw in the video that Stroud gave  
5 Officer Phillips instructions on several occasions;  
6 correct?

7 A Yes.

8 Q About putting a knee on him, putting body  
9 weight on him and using the TASER on him; correct?

10 A He gave those instructions, but it's still  
11 Officer Quinton's use of force.

12 Q Well, I understand. I didn't ask you that  
13 question.

14 A Yeah.

15 Q But I just asked you: He gave  
16 instructions; correct?

17 A He did, yeah.

18 Q Okay. And at some point after Phillips  
19 arrived and got -- was seeing what was going on, he  
20 did pull his TASER, which I think you've already  
21 said was a TASER X2; correct?

22 A Yes.

23 Q And Stroud requested him to use his TASER  
24 on Rodriguez; correct?

25 A Yes.

1 Q And Phillips did?

2 A Four times.

3 Q Well, he first deployed the TASER in the  
4 prong mode --

5 A Um-hum.

6 Q -- correct, the trigger pull; right?

7 A Yes.

8 Q And you saw --

9 Were you able to determine whether the  
10 probes struck Rodriguez?

11 A No, because by then he had already been  
12 tased by different officers with Hampton.

13 Q Okay. And you saw from the video that  
14 the -- Phillips's discharge, trigger pull, that  
15 first application, did not cause neuromuscular  
16 incapacitation; correct?

17 A No. I -- Phillips' first use of the  
18 TASER X2 did cause neuromuscular incapacitation  
19 because you can see -- he's lying su -- he's lying  
20 supine. He's laying on his back. And you can see  
21 the electricity. I mean, it's a pretty good probe  
22 spread. It looks like one's in his thigh and maybe  
23 one's in his hip area or maybe just below his  
24 diaphragm; but you can see the electricity.

25 So my assessment is, Phillips' first TASER

1 deployment with his X2 was effective.

2 Q And you believe you can see that on video?

3 A I can see the arcing, where the  
4 electricity is arcing on the probes that are in the  
5 skin.

6 Q And you're referring to the Lewis video?

7 A The body-cam video, yes --

8 Q Um-hum.

9 A -- that's 30 minutes and some seconds  
10 long.

11 Q Did you primarily rely upon the Lewis  
12 body-cam video, which I will submit to you is the  
13 one that shows the most of the interaction, the most  
14 views of what's going on?

15 Is that what you relied upon?

16 A That's the only video I have access to. I  
17 haven't seen any others.

18 Q Oh. That's the only one you've seen?

19 A Yes. I know they're mentioned in the  
20 reports. I think Phillips, I believe -- or maybe  
21 Butera said, when I arrived on scene, I positioned  
22 my patrol car with my dash cam recording. But those  
23 have not been provided to me.

24 Q Okay. You believe you see on that Lewis  
25 body-cam video electricity arcing between the probes



1 showing what you've referred to as neuromascular --  
2 neuromuscular incapacitation?

3 A Yes.

4 Q Okay. We're going to watch the video.  
5 I'll need you to show me that eventually, but we'll  
6 do that in a little bit.

7 And as the events transpired from that  
8 point forward, after the first trigger pull,  
9 Officer Phillips trigger-pulled the TASER several  
10 more times; correct?

11 A Yes.

12 Q All right. And did you see any evidence  
13 in those pulls that there was neuromascular --  
14 neuromascular -- neuromuscular incapacitation?

15 I'm going to just refer to it as NMI.

16 Is that okay going forward?

17 A That's fine.

18 Q Okay.

19 A No, I couldn't, because by then Lewis's  
20 body cam -- they had all congregated into a pile, so  
21 the image -- there was almost no light. The camera  
22 wasn't picking up anything. All you can just see is  
23 shadows more than anything else. You can't see  
24 features during the restraining of Fernando.

25 Q So is it fair to say, the only one that

1 you can tell achieved NMI, as you've seen it, was  
2 the first deployment --

3 A Yes, with --

4 Q -- and the first trigger pull?

5 A With Phillips.

6 Q Right, with Phillips.

7 A But then if I could add that once Phillips  
8 got closer, while they were going to handcuff him,  
9 when he pulled the TASER X2 trigger a second time,  
10 the gap would have been narrower because the TASER  
11 is closer to Fernando; so the probe spread is  
12 narrower than it was when he was -- when Phillips  
13 was maybe seven or eight feet away.

14 Does that make sense, Counselor?

15 Q No. Are you talking about a second  
16 deployment of different probes --

17 A No.

18 Q -- or you're talking about the same probes  
19 that were deployed the first trigger pull?

20 A So when Phillips pulled the trigger the  
21 first time, he fired his left cartridge. Two probes  
22 came out. And I believe one hit him in the thigh  
23 somewhere, and one hit him below the diaphragm.  
24 When he pulled the trigger a second time, it fires  
25 the right cartridge.

1           And because they had closed in to restrain  
2 him and get him in handcuffs, the TASER X2 was  
3 closer to Fernando; so the probe spread narrow --

4           The closer you get, the narrower the probe  
5 spread.

6           Q     Right.

7           A     And if you don't have at least --

8           Generally, the preferred is, you have to  
9 have 12 inches of probe spread to get neuromuscular  
10 incapacitation. And he would have had less than  
11 that.

12          Q     Do you know how much? Are you able to  
13 determine, because there's so many different probes  
14 that you wouldn't be able to see with --

15          A     And that's right. And the probes are  
16 pretty much the same.

17          Q     Um-hum.

18          A     But every time -- I'm sorry.

19                So every time Phillips pulled the trigger,  
20 the first one -- the first time he pulled, it fires  
21 the left one. And every time after that, it only  
22 energizes the right cartridge.

23          Q     So the second trigger pull, the right  
24 cartridge probes deployed. And then the subsequent  
25 trigger pulls would have been trying to impart

1 delivery of electricity through those probes from  
2 the second cart -- the right cartridge?

3 A Yes, just the ones on the right.

4 Q Right. And if it was a short spread, it  
5 wouldn't have been imparting any electricity that  
6 would conduct -- that would cause any  
7 neuromuscular -- or affect the muscles at all;  
8 right?

9 A That's correct, Terry. It would have just  
10 been more pain compliance with the probes being  
11 close to each other.

12 Q And do you know that in those four trigger  
13 pulls initially, first with the left cartridge and  
14 then three with the right cartridge, that  
15 electricity was actually being delivered to  
16 Rodriguez's body?

17 A You can't tell that from the video. You  
18 would have to have the pulse graphs from --

19 Q Right.

20 A And I have not -- I don't believe I've  
21 seen the pulse graphs.

22 Q You haven't seen the pulse graphs. I  
23 noticed that.

24 A TASER download will show what was  
25 recorded about the electricity. It gives pretty

1 detailed information, including diagnostic  
2 information, as well as pulse graphs that show the  
3 level of discharge; correct?

4 A Well, that's right. It will show the  
5 amount of microcoulombs, which is --

6 Q Right.

7 A -- a measurement of energy.

8 You know, TASER prides itself that -- they  
9 use to market it gives 50,000 volts of electricity.  
10 A long time ago they use to market it that way.

11 Q Right.

12 A But that's not true. It's generally  
13 around 1,200 volts.

14 Q Right.

15 A The tasers today are so much safer because  
16 they regulate the --

17 Q Um-hum.

18 A -- to give people the safest-possible  
19 amount of electricity.

20 Q And the media love to report 50,000  
21 volts --

22 A 50,000.

23 Q -- on any incident involving police use of  
24 TASER; right?

25 A Right.

1           Q     When it actually --

2                     The volts really is not what determines  
3 the effect on the person. It's how it's delivered  
4 in microcoulombs; correct?

5           A     That's correct.

6           Q     It's kind of similar to the amps sort of.  
7 So if you've got 50,000 volts or 1,200 volts, that's  
8 just the energy waiting to be deployed.

9                     But how much of it's deployed depends on  
10 the microcoulombs or amps; correct?

11          A     Yes.

12          Q     And, in fact, the amount that's deployed  
13 in a TASER, a TASER X2, for example, is much, much,  
14 much less than actually what would be imparted by an  
15 AED; correct?

16                     Do you know the difference?

17          A     You know, but generally defibrillators  
18 are -- the measurement is joules.

19          Q     Right.

20          A     So I don't know what the comparison is  
21 between a joules and a microcoulomb. It would just  
22 be a guess.

23          Q     I think it's something around 3,000 times  
24 greater in an AED over a TASER.

25                     But you're not familiar with those

1 statistics?

2 A I don't know that I've ever thought about  
3 it in those terms.

4 Q Okay. Have you ever --

5 Have you reviewed TASER download printouts  
6 and pulse graphs before?

7 A I have.

8 Q Do you know how to read them?

9 A I have. I do.

10 Q Okay. Do you know --

11 What does it mean if the TASER download  
12 shows a --

13 Let me see what we've got here. I'll let  
14 you look at this, actually. Here we go, a cartridge  
15 sense fault.

16 Do you know what a cartridge sense fault  
17 is?

18 A So for some reason the cartridge is not  
19 communicating well with the TASER, or vice versa.

20 I've had that happen with my own duty  
21 TASER that I carried as a Roswell police officer.  
22 Oftentimes, it's a simple fix of, you take the  
23 cartridge out, you set it back -- you push it back  
24 in; maybe like an iPhone charger that you stick the  
25 charger in your iPhone, it doesn't start charging,

1 then you turn it and it does; or sometimes, like,  
2 with a TASER X2, if you'll swap the cartridges, then  
3 the fault icon will go away.

4 Q Okay. What does that mean in terms of  
5 electrical delivery of electricity -- delivery of  
6 electricity?

7 A I have fired cartridges that said  
8 cartridge fault, and they fired fine and they  
9 provided the same amount of electricity.

10 It's just -- like I say -- I look at it as  
11 a miscommunication between the cartridge and the  
12 TASER.

13 Q Do you know what it -- what happens when  
14 there is arcing between the probes? When you see  
15 the flash as you've described, what's happening in  
16 that -- when that occurs?

17 A So when the -- one of the -- when the  
18 cartridges come --

19 When the probes come out of the cartridge,  
20 one of them is positive and one of them is negative.  
21 And all they want to do is hold hands, and they  
22 prefer to hold -- they're designed to hold hands  
23 within the body. That's why if one probe hits you  
24 in the shoulder and one probe hits you in the leg,  
25 they will hold hands -- the electricity will use



1 your body fluids to hold hands with the electricity.

2 That's why a good TASER deployment is a  
3 quiet TASER deployment because the electricity is  
4 happy --

5 Q Right.

6 A -- because it's holding hands with the  
7 opposite -- with the opposite polar.

8 Q And if it's arcing and making noise,  
9 that's an indication that it's not making the  
10 contact between the two points; correct?

11 A That's right, because if the cart -- if  
12 the probes are generally more than two inches apart,  
13 the electricity can't close the gap in air; so  
14 that's why --

15 And you heard some of these in the  
16 incident in Hampton in Henry County, is the officer  
17 could say you don't have a good deployment, because  
18 when Fernando was back-crawling, one of the cart --  
19 one of the probes came out. So one probe is in his  
20 body. One probe is laying on the asphalt. The  
21 officer fires his TASER again, but it's not happy  
22 because the TASER probe on the asphalt is unhappy  
23 because it can't find the one in the body.

24 Q And that happened a number of times during  
25 these attempted deployments of tasers, both with the

1 City officers and with Officer Phillips; correct?

2 A And that's common with tasers. Some  
3 tasers can be positional in that they get caught in  
4 baggy clothes. So if the person is leaning one  
5 direction versus the other, as long as the probe can  
6 get within an inch and a half to two inches of the  
7 skin, the electricity will go into the skin and hold  
8 hands with the other probe.

9 Q And if a subject that the TASER is being  
10 deployed on has more fat, say if they're obese, that  
11 can also affect the delivery of electricity or the  
12 ability for it to affect the muscles; correct?

13 A I would say no. Whether they're --  
14 One of the challenges is, very, very  
15 skinny people are at greater risk for TASER  
16 deployments, frail or infirm or skinny. But I've  
17 never --

18 With all the officers that I've tased in  
19 training, whether they're plus-size or normal size  
20 or small, the electricity affects them the same.

21 Q Where do you put the tasers, though, on a  
22 person -- on an officer when you're using it on them  
23 in training?

24 A We almost always probe them from the back.  
25 That's part of the training doctrine that we're --

1 the procedure --

2 Q You don't fire the probes into them in the  
3 back?

4 A Yes, we do.

5 Q You fire the probes in them?

6 A We fire right into them.

7 Q You don't do the connector --

8 A We don't do the alligator clips.

9 Q Oh, okay.

10 A And one reason is, is with the alligator  
11 clips, it's like a drive stun. So where the --  
12 where you -- because you're clipping them to their  
13 clothes, you den -- you generally get more burn  
14 injuries. And it's better to put the probes in  
15 them.

16 One reason why we probe officers during  
17 training, or we prefer, is it gives the students who  
18 are becoming TASER instructors the opportunity to  
19 take the probes out.

20 Q Um-hum. Do you agree with the statement  
21 that if a TASER is not imparting electricity to a  
22 subject, even though the trigger is being pulled,  
23 those trigger pulls do not constitute a use of force  
24 since no force is being applied to the subject?

25 A I don't agree with that.

1 Q Okay. If a person --

2 If an officer is using an ASP baton in an  
3 incident and he swings and misses the subject with  
4 the ASP baton, he hasn't used force on the subject,  
5 has he?

6 A I would say he has used force.

7 Q He's attempted to use force, but if it  
8 doesn't --

9 If you shoot someone -- or shoot at  
10 someone and you don't hit them, you haven't used  
11 deadly force on that person, have you? You've  
12 displayed it, but you weren't successful; correct?

13 A And I would say that you committed  
14 aggravated assault -- aggravated battery if you  
15 shoot at somebody and miss.

16 Q But that's a different notion of whether  
17 there's any criminal or even policy violation. I'm  
18 just talking about whether there's been any use of  
19 force on that individual.

20 A And what I --

21 So I guess the way I would answer that  
22 question, Terry, is, if I fire at somebody with a  
23 TASER and one probe hits them and one probe misses,  
24 I still used force because their body got struck by  
25 a probe. Even though they didn't get any

1 electricity, they still got a probe inside that  
2 penetrated their skin.

3 Q Right. You understand that the TASER  
4 training materials and TASER policy does not  
5 prohibit multiple discharges of a TASER during an  
6 incident.

7 A It does not.

8 Q Correct? Okay.

9 The training materials refer to sort of,  
10 ideally, of using a number of TASER deployments and  
11 then reassessing; correct?

12 A They would tell you --

13 TASER would tell you: reassess before  
14 every use of a TASER.

15 Q Right. And that's just a recommendation?

16 A And that applies to all of an officer's  
17 tools on their tool belt, is always reassess -- you  
18 hit them with one baton strike. You're going to  
19 reassess before you hit them with another. But  
20 generally --

21 Q Sure.

22 A Generally, tasers is, less is best. The  
23 fewer times they get tased, generally the better  
24 outcome for everyone.

25 Q Right. You agree it's not a violation of

1 Axon's training for an officer to use a TASER  
2 multiple times if he deems it appropriate and if  
3 it's reasonable under the circumstances; correct?

4 A If it's a -- if an officer can --

5 Q The thing about --

6 Listen, when I ask a question that calls  
7 for a yes or no, please say yes or no. That's the  
8 way the process is supposed to work, because I am  
9 allowed to ask cross-examination questions.

10 If you want to explain it, you can do  
11 that. You have the right to do that. That's what  
12 the judge would tell you. But I would like to get a  
13 yes or no.

14 A Would you restate the question, please,  
15 Counselor?

16 Q It's not a violation of TASER policy or  
17 TASER training to use a TASER on more than one  
18 occasion on a suspect; correct?

19 A No.

20 Q Okay. Let's talk about your expert  
21 witness consultation and work.

22 In this case you've been identified by the  
23 Plaintiffs as an expert witness, a person that's  
24 going to give expert testimony under the Federal  
25 Rules.

1                   When did you start doing this type of  
2 work?

3           A       This is the first time.

4           Q       First case you've worked on?

5           A       Yes, sir.

6           Q       All right.

7           A       I did work on -- I did work on another one  
8 in Norcross maybe seven or eight years ago, but all  
9 I was asked to do was to write a single statement.  
10 There was no deposition. I just wrote a single  
11 statement that officers -- and I believe it's  
12 something to the effect of officers should be  
13 certified in tasers if they're going to carry them,  
14 and these officers were not.

15          Q       Um-hum.

16          A       But that was the extent of it.

17          Q       Who did you write that for?

18          A       It was the Gwinnett -- it was the City --  
19                   It involved the City of Lawrenceville  
20 Police Department.

21          Q       Okay.

22          A       And it really wasn't --

23                   And the way the case happened is, is they  
24 attempted to tase someone. It was unsuccessful, so  
25 they ended up shooting them and killing them. And I

1     guess the gist of the lawsuit was, if they had been  
2     better trained in their TASER, maybe it wouldn't  
3     have transitioned to a use of force where somebody  
4     had to be killed.

5           Q     Who did you write the statement for?  Who  
6     asked you to do that?

7           A     The Plaintiff's lawyer.

8           Q     Who was that?

9           A     Ooh.  I don't -- I can find it.

10          Q     Okay.  And so, then, this case, then, you  
11     were --

12                   How did it end up that you were contacted  
13     and got involved in this case?

14          A     So Jeff McCaslin is a Lieutenant at the  
15     Clayton County Police Department.

16          Q     McCasolum?

17          A     McCaslin.

18          Q     How do you spell that?

19          A     M-C -- hold on -- M -- McCaslin?

20     M-C-C-A-L-I-N (spelling) [sic], McCaslin.

21                   But he is the training Lieutenant for the  
22     Clayton County Police Department.  He was one of my  
23     instructors when I went to the police academy.  And  
24     then he also became one of my students because when  
25     I was a master instructor for TASER.  I certified



1 him and recertified him as a TASER instructor  
2 several times, so he was one of my students when I  
3 taught courses for TASER International.

4 He reached out to me and asked me was I  
5 interested in becoming an expert witness and --  
6 because he was approached, I believe, and had a  
7 conflict because his wife or ex-wife is a law  
8 enforcement officer in Henry County. And he just  
9 didn't want -- he just didn't want there to be a  
10 conflict.

11 Q Who contacted him? Do you know?

12 A I'm assuming Jess did.

13 Q The attorney, Jess Johnson?

14 A Yes. And so McCaslin called me and asked  
15 me would I be willing to talk to Jess. And I said,  
16 sure, I'm always happy to talk and listen.

17 And then I guess a few days later, Jess  
18 reached out to me, and we had a conversation.

19 Q When did you first talk with Mr. Johnson?

20 A Maybe May, June. I don't remember exactly  
21 the day we first started our discussion.

22 Q Of 2021?

23 A Last year. Yeah. It's been with --  
24 approximately a year.

25 Q All right. What was stated during that

1 first conversation? What information were you  
2 provided and what were you asked to do?

3 A So I guess Jess called me and said that  
4 McCaslin had recommended but that Jess was confused  
5 because he wasn't sure -- he said -- he says you are  
6 a fire chief but you're a police officer but you're  
7 a college professor and you're a TASER master  
8 instructor, so -- he said, which one are you? And I  
9 said, well, I'm all of them. And --

10 But I think I sent him my C.V. And then a  
11 few days later, he came back and said, even though  
12 you've never testified as an expert witness, we're  
13 comfortable that you would be accepted. And he sent  
14 me a copy -- he sent me a link to the video, and I  
15 watched it. And that's when I said I would be happy  
16 to offer my expert opinions of what I observed.

17 Q And when Mr. Johnson first contacted you,  
18 did he give you facts? Did he represent any factual  
19 information to you?

20 A (Witness shakes head negatively.)

21 Q Just asked you if you'd be interested in  
22 looking at this?

23 A He sent me the video. That was the first  
24 discussion we had, on whether I was interested in  
25 being an expert witness and offering my opinions on

1 this. And I think some time after -- shortly after  
2 I agreed to it, then I got a Dropbox link with the  
3 Incident Report and --

4 Q All the materials that you've listed?

5 A -- all the other materials that I --

6 Q Um-hum.

7 A And that's when he asked me to author an  
8 expert-opinion report.

9 Q Did Mr. Johnson give you any opinions that  
10 he wanted to see if you agreed with or did you  
11 provide him with all of your opinions on your own?

12 A He gave me no direction other than to be  
13 truthful and to make sure that my expert opinions  
14 were my own. And that's what I did. No --

15 The statements that are in that 36-page  
16 report, Terry, are my statements.

17 Q So, as we've discussed previously, since  
18 this is your first case, you've never testified in a  
19 deposition or in court in regard to opinions about a  
20 use-of-force incident or any other type of police  
21 behavior?

22 A I have not.

23 Q Okay. And your rates, I think you  
24 indicated what those were.

25 You're charging \$150 an hour?

1           A     Yes, sir.

2           Q     Okay. And how many hours have you spent  
3 thus far in this case working for the Plaintiffs'  
4 attorney?

5           A     I think the initial invoice was \$3,900,  
6 how ever many hours that is divided by 150. And I  
7 would imagine -- I think for the last several  
8 months, you know, like, I received the Henry County  
9 Police use-of-force policies. And I was -- I was  
10 asked to review them and offer my opinions.

11                     So I would imagine I've probably got 12 to  
12 15 hours that I haven't sub -- I haven't submitted  
13 another invoice. I submitted the original one I  
14 provide -- when I provided the expert opinion, but  
15 the rest of it --

16           Q     Right.

17           A     -- I'm just --

18                     Maybe 10 or -- 12 or 14 hours that I  
19 haven't submitted an invoice for yet.

20           Q     Well, we'll come back to that.

21                     So you weren't provided with the Henry  
22 County Police Department use-of-force policy that  
23 was in effect at the time of the incident; correct?

24           A     I was.

25           Q     This incident occurred in September of

1 2019, and there was a use-of-force policy that was  
2 in effect at that time; correct?

3 A Yes.

4 Q And there was a use of electronic -- or  
5 Conducted Energy Weapons in place at that time, as  
6 well; correct?

7 A Yes.

8 Q Okay. And it looks like you were provided  
9 with a copy of the use-of-force policies that were  
10 adopted after this incident; correct?

11 A Yes.

12 Q Okay. You agree that the use-of-force  
13 policy that would control the officers' conduct  
14 would have been the one in place at the time?

15 A Absolutely.

16 Q Okay. At any time during your career  
17 either as a armed medic or as a police officer with  
18 Clayton County Sheriff's Department or with the City  
19 of Roswell Police Department, have you ever been  
20 involved in any way in a situation in which a  
21 detainee or a subject ever was determined to have  
22 died from positional or compressional or restraint  
23 asphyxia?

24 A No.

25 Q Have you ever had the occasion, even going

1 back even further in your years as a medic, to  
2 examine or see someone that it was determined had  
3 died from positional or compressional asphyxia?

4 A Yes.

5 Q Okay. Tell me about that occasion or  
6 whichever occasions.

7 A I mean, so some of them are when somebody  
8 goes out in their driveway and decides to change the  
9 oil and they jack their truck up and it rolls down  
10 and, you know, maybe seven hours later their wife  
11 comes home from work and finds them out there, been  
12 dead all day long.

13 Q And if a car falls on somebody, that's a  
14 massive amount of weight. We're talking thousands  
15 of pounds; correct?

16 A Sure.

17 Q Okay. Other than the vehicle falling on  
18 someone, have you ever seen a situation where  
19 someone got into a position, either prone or stuck  
20 somewhere, where there was some weight against them  
21 and they died from that asphyxia?

22 A We've had a number of industrial accidents  
23 where people got compressed between machinery. One  
24 of them was on Battle Creek Road right next to the  
25 fire station, and it's a -- like, a carpet-weaving

1 company. And somebody had removed a safety bar.  
2 And the fabric got stuck, and so this employee  
3 hoisted themselves up and tried to stick their feet  
4 in to jostle the fabric loose. And the machine  
5 grabbed them and pulled them into it and into the  
6 roller system.

7 And so I've seen industrial accidents like  
8 that that -- very unpleasant.

9 Q And that would be a tremendous amount of  
10 pressure if they're sucked in and pressed down;  
11 correct? I don't know what the psi would be, but it  
12 would be equivalent of thousands of pounds of  
13 pressure; correct?

14 A Yeah. And I saw a couple of young men,  
15 18/19/20 years old working at the bottom of a  
16 plumbing trench hooking up drain lines. And, you  
17 know, they're 20 feet down and there's no shoring.  
18 And the dirt walls collapse on top of them, and it's  
19 all over for them, because I was on the Technical  
20 Rescue Unit. So the Technical Rescue Unit responds  
21 to people who are in really, really unfortunate  
22 situations.

23 Q Had you ever seen a person who, by  
24 accounts of what happened leading up to it, had died  
25 from positional or compressional asphyxia from

1 someone putting weight or holding them down in some  
2 manner?

3 A With as many violent deaths as I saw in  
4 Clayton County, I'm sure there were. None of  
5 them -- but were people forced down and compressed  
6 so that they couldn't breathe? Yes.

7 Q Just through weight on their --

8 A Yes.

9 Q -- torso?

10 A Yeah.

11 Q You believe you saw that?

12 A I'm certain. I mean, I saw thousands of  
13 deaths at Clayton County. And I have no doubt that  
14 somebody may have been crushed, yes.

15 Q Can you identify any way: Date? Time?

16 A No, sir.

17 Q Person? Place?

18 A I can't, but --

19 MR. WILLIAMS: Okay. All right. Let's  
20 take a short break. We've been going for a  
21 while now. We'll take a little bathroom  
22 break, five minutes.

23 THE WITNESS: Sounds good.

24 (Whereupon, there was a recess  
25 in the deposition from



1 12:16 p.m. to 12:22 p.m.)

2 BY MR. WILLIAMS:

3 Q Dr. Lowe, the only research materials that  
4 you apparently reviewed and you listed was a couple  
5 of articles of the -- that, I guess, were posted in  
6 the U.S. Department of Justice National Institute of  
7 Justice Bulletin.

8 Is that right?

9 A Yes, yes.

10 Q And that was a bulletin on Positional  
11 Asphyxia, Sudden Death, that was issued in June  
12 1995; right?

13 A Yes, sir.

14 Q So have you reviewed -- and maybe not in  
15 connection with this case, but have you reviewed any  
16 of the studies in recent years that have dealt with  
17 the concept of positional or compressional asphyxia  
18 through body weight applied to a subject?

19 A No, sir.

20 Q All right. So I've sort of grouped  
21 together your opinions that are asserted in your --  
22 actually, before I do that -- strike what I just  
23 said. I tell you what, I'm going to come back to  
24 that. I will go ahead and go to this.

25 MR. WILLIAMS: Just a second here, off

1           the record.

2                               (Thereupon, a discussion was  
3                               held off the record.)

4           MR. WILLIAMS: Back on the record.

5 BY MR. WILLIAMS:

6           Q     We've already covered that you discussed  
7 the Georgia laws that were potentially involved and  
8 that certainly provided the officers with probable  
9 cause to arrest Fernando Rodriguez for various  
10 offenses.

11                    You also then mention in your opinions in  
12 regard to that, the arrest, that the -- that you  
13 believe the officers should have recognized that  
14 Rodriguez was emotionally disturbed and having some  
15 sort of crisis; right?

16           A     Yes.

17           Q     And that the treatment of him for that,  
18 whether it's medical treatment or whatever is  
19 necessary, should have been a focus of the officers  
20 at some point?

21           A     It should have been the highest priority.

22           Q     Okay. And from what's seen in the video,  
23 the City officers were concerned that he was under  
24 the influence of something and indicated to him  
25 pretty early on they were going to get him help;

1 correct?

2 A Yes. Yes, sir.

3 Q And there was an ambulance requested  
4 within a few minutes after the encounter.

5 True?

6 A No.

7 Q What's wrong about that?

8 A I believe it was eight minutes into the  
9 encounter. They didn't really request the  
10 ambulance --

11 Q Okay.

12 A -- until he was in handcuffs.

13 Q I should say a few minutes after they got  
14 him -- started wrestling with him on the ground and  
15 getting him in handcuffs; correct?

16 A Yes.

17 Q Okay. So at that point that they've had  
18 the encounter with him physically and trying to hold  
19 him to the ground, within a few minutes of that  
20 there was a request for EMS made; right?

21 A Yes.

22 Q And Officer Phillips heard that -- renewed  
23 that EMS was on the way once he heard that radio  
24 request by one of the -- I think it was Stroud;  
25 correct?

1           A     Yes.

2           Q     Okay. And, in fact, Stroud then followed  
3 up and asked on another occasion for an ambulance to  
4 be en route to the scene; correct?

5           A     I only heard one request for a Signal 4,  
6 which is an ambulance.

7           Q     You didn't hear Stroud follow up and ask  
8 for the ambulance and then also ask where the  
9 ambulance was, trying to figure out why it wasn't  
10 there yet?

11          A     I heard the officers talking among  
12 themselves about where is the ambulance, what's  
13 taking so long.

14          Q     Okay. Um-hum.

15          A     But that wasn't over the radio traffic.  
16 The only thing other --

17                The only other radio traffic I heard  
18 reference to ambulance is, I think Stroud told them  
19 he's a -- he's a mental health person in a crisis;  
20 so I think he gave the -- after he asked for the  
21 ambulance, a few moments later, then he said, you  
22 know, he's having a crisis, or some words of those  
23 effect.

24          Q     Okay. So you didn't hear the --

25                If there was a follow-up request about the

1 ambulance via the radio, you didn't hear that in  
2 what you reviewed?

3 A No.

4 Q Is that right? That's correct?

5 A No, sir.

6 Q What I just said was correct? You didn't  
7 hear it?

8 A I did not hear it.

9 Q Okay. You also note in your report that  
10 once Officer Phillips arrived at the scene to assist  
11 the officers, Officer Stroud repeatedly asked  
12 Phillips to use force to restrain Rodriguez;  
13 correct?

14 A Yes.

15 Q Okay. The initial decision by the City  
16 officers to use a TASER deployment on Rodriguez was  
17 made after Rodriguez had attempted to continue  
18 walking down the street despite their commands for  
19 him to stop.

20 True?

21 A Yes.

22 Q And it was within their judgment or  
23 discretion to determine whether it was appropriate  
24 to use the TASER to accomplish that detention;  
25 correct?

1           A     Yes.

2           Q     You agree that if they had just attempted  
3 to talk to Fernando and try to convince him to stop,  
4 that it was dangerous -- that would have been a  
5 dangerous situation because he could have continued  
6 walking down the road and it could have resulted in  
7 injuries to himself or to the public; correct?

8           A     No.

9           Q     Are you aware that a motorist almost hit  
10 him previous to the officers arriving and she  
11 reported that to 9-1-1?

12          A     I did not read --

13                I do not have that information.

14          Q     Okay. And you don't agree that him  
15 continuing to walk naked down the road could have  
16 caused -- could have resulted in harm to him or  
17 danger to the public?

18          A     It could have.

19          Q     Did you notice if there were cars parked,  
20 stopped in the vicinity as the officer -- City  
21 officers were trying to deal with Rodriguez and  
22 detain him?

23          A     I did see other cars.

24          Q     And if Rodriguez had run in front of those  
25 cars or other cars that may have been in the area,

1     that could have caused injuries to himself or to the  
2     persons in those vehicles; correct?

3             A     Yes.

4             Q     Okay. The officers had a duty to try to  
5     protect everyone's safety at the scene; correct?

6             A     Yes.

7             Q     And so did Officer Phillips upon his  
8     arrival; correct?

9             A     Yes.

10            Q     Okay. Do you agree that Rodriguez would  
11     eventually have to be restrained, given the offenses  
12     that he had committed and his actions there at the  
13     scene?

14            A     Yes.

15            Q     Okay. And transported to the hospital,  
16     given what the officers had seen and the fact that  
17     they called for EMS to evaluate him; correct?

18            A     That would have been ideal.

19            Q     Okay. And I know that you have served as  
20     a medic for many years, and so I'm sure you're aware  
21     that medics generally will not go up to a scene of  
22     someone who's being combative until the law  
23     enforcement officers have got that person under  
24     control and it's safe for them to approach?

25            A     Paramedics want to hear scene secure, yes.

1           Q       So if EMS had arrived before the officers  
2       had gotten Mr. Rodriguez under control, meaning that  
3       he's no longer trying to bite or kick or swing at  
4       any of the officers, the EMS would not have come to  
5       evaluate him; correct?

6           A       Correct. But can I offer more  
7       information?

8           Q       Sure. Go ahead. Yeah. That's --

9           A       So it's not uncommon that officers would  
10      request an ambulance to stand by.

11                   When I did police training at the Roswell  
12      Police Department for officers -- and we talked  
13      about these exact types of situations in our  
14      classes -- I said, as soon as the call comes out of  
15      a naked, screaming man doing whatever, ask dispatch  
16      to start the ambulance and the fire department, go  
17      ahead and stage them a block away, so now the medics  
18      are at least en route to the scene. And then once  
19      you -- once you as the law enforcement officer  
20      determine it's safe for the paramedics to come in,  
21      then the paramedics and law enforcement can come up  
22      with a plan, what are we going to do with this  
23      person who's obviously having a medical crisis.  
24      They can come up with a strategy.

25           Q       Do you know when an ambulance was actually



1     dispatched by the 9-1-1 communication officers  
2     within this timeline?

3             A     I don't know the exact time.

4             Q     Do you know whether it was even before  
5     Officer Stroud had asked for an ambulance to be  
6     dispatched?

7             A     I have no knowledge of that.

8             Q     You note in your report that the --  
9                     Well, you state in your report that the  
10    manner of death was homicide caused by asphyxia, and  
11    you cite the Death Certificate for that statement;  
12    correct?

13            A     Correct.

14            Q     But you are not qualified to offer an  
15    expert opinion on the manner or cause of death;  
16    correct?

17            A     No.

18            Q     You would certainly expect that that would  
19    have to be a person who is trained in forensic  
20    medicine and determining pathologically how someone  
21    died; correct?

22            A     Correct.

23            Q     Okay. So when you refer to positional  
24    asphyxia, you are basing that on the medical  
25    examiner's opinions that were rendered in the

1 autopsy report?

2 A And also what I observed on the video.

3 Q Well, from what you observed on the video,  
4 how can you determine that Fernando Rodriguez died  
5 from positional asphyxia since you're not trained on  
6 determining cause of death?

7 A Because I could hear him grunting and  
8 attempting to breathe. I mean, I heard what I  
9 heard, that he was struggling to take a deep breath  
10 and he --

11 Q Well, let's --

12 It's not unusual for someone who has been  
13 involved in an incident like this in which they are  
14 excited and resisting arrest, combative with law  
15 enforcement, to be experiencing shortness of breath  
16 from exertion; correct?

17 A Correct.

18 Q That doesn't mean they're suffering  
19 positional asphyxia, does it?

20 A It could.

21 Q Well, it could mean a lot of things, but  
22 we've got to determine here what's the certainty.

23 You're saying that you saw evidence of  
24 positional asphyxia, and you're only basing that  
25 just on the -- what you saw, the shortness of

1     breath?

2           A     And office -- I'm sorry.

3           Q     Go ahead.

4           A     And officers' hands/knees/feet on Fernando  
5 while he's laying prone on the asphalt with his  
6 hands handcuffed over his head and leg irons on his  
7 ankles. It's -- clearly, he's having trouble  
8 breathing.

9           Q     How can you say that that position was  
10 causing him difficulty breathing?

11          A     Because, again, with him having the weight  
12 of other officers on his back and his torso and his  
13 neck is going to make it hard for him to breathe.

14          Q     All right. And you base that upon any  
15 studies that you've conducted?

16          A     Just my own experience as a paramedic for  
17 40 years, that people find it easier to breathe when  
18 they're sitting up or when they're laying on their  
19 side than when they're laying prone.

20                   One of the first things we always want to  
21 do as paramedics is get people in the recovery  
22 position so you get the pressure off their diaphragm  
23 and chest.

24          Q     So you think it's easier for a person to  
25 breathe in the sitting-upright position rather than

1 prone on their -- on their -- prone on the ground or  
2 floor?

3 A I think it's easier for people to breathe  
4 sitting in a chair or laying on their side than  
5 laying on their stomach.

6 Q You don't have any medical training to  
7 determine that, though, do you?

8 A Sure, I mean, basic CPR classes.

9 Q Basic CPR covers whether somebody has more  
10 difficulty breathing in the prone position than  
11 being on their side or in a sitting position?

12 A Basic CPR classes have people put in the  
13 recovery position.

14 Q For what purpose?

15 A So that they don't vomit and aspirate, the  
16 vomit gets into their lungs; but it's easier to  
17 breathe on your side than on your stomach.

18 Q Okay. Anything other than your CPR  
19 classes that have provided you with medical training  
20 in that regard?

21 A My paramedic training, all the medical  
22 recertification I've had for more than 40 years as a  
23 Georgia paramedic.

24 Q In your paramedic training, was there any  
25 citation of studies that showed that there was

1     impairment -- sufficient -- significant impairment  
2     of breathing from someone being in a prone position?

3             A     I don't recall those studies.

4             Q     None of the TASER deployments by  
5     Officer Phillips violated any provisions of the  
6     Henry County Police Department policy regarding  
7     TASER use; correct?

8             A     No, not correct.

9             Q     How did he violate Henry County Police  
10    Department's CEW or TASER policy in effect at the  
11    time?

12            A     Well, the last two TASER deployments --  
13    the last two or three TASER deployments he did were  
14    not objectively reasonable.

15            Q     Why not?

16            A     Fernando had been handcuffed and  
17    restrained, and he had been given no com -- he had  
18    not been given any commands by anyone. He just --

19                    When Fernando was trying to breathe and he  
20    would push up and you could hear some type of brief  
21    struggle, that's when Phillips would tase him for a  
22    second or two. It wasn't --

23            Q     That was a drive stun?

24            A     Yeah. It was a drive stun, but it wasn't  
25    a full --

1           So he pulled the trigger, delivered  
2   electricity for one or two seconds and turned the  
3   trigger off; so he made it safe. It wasn't a full  
4   deployment, but he still -- he still applied force  
5   two or three times on a handcuffed person who is  
6   being restrained by a total of five officers.

7           Q     But that person was continuing to be  
8   physically combative; correct?

9           A     I would say no, sir.

10          Q     You don't hear that over the video, the  
11   officers talking about him continuing to resist,  
12   trying to bite them, doing those things when  
13   Officer Phillips used the drive stun?

14          A     No.

15          Q     You didn't see that? Okay.

16                 You would agree that Rodriguez had  
17   demonstrated he was a flight risk by continuing to  
18   walk away from the City officers when he was told to  
19   stop; correct?

20          A     He failed -- yes. He failed to comply.

21          Q     And he also demonstrated he was a flight  
22   risk even after they used the TASER by trying to  
23   crawl away; correct?

24          A     Correct.

25          Q     I think I touched on this a little bit

1 before.

2 But are you aware that Fernando Rodriguez  
3 was considered -- was in the obese category from --  
4 given his weight, his body weight?

5 A He was a big guy.

6 Q Do you know how much he weighed, according  
7 to the report?

8 A The Incident Report says he was five-nine,  
9 160 pounds. He was greater than that.

10 Q Right. I'm talking about the actual  
11 measurement, not somebody's estimate.

12 A I don't -- I don't know how much he  
13 weighed.

14 Q Okay. And you say that you're not aware  
15 that obesity significantly affects the effectiveness  
16 of a Conducted Energy Weapon, a TASER?

17 A I've never seen a difference between a  
18 heavy officer and a skinny officer when I've done  
19 voluntary exposures.

20 Q You agree that the officers first talked  
21 about seeing a change in Fernando Rodriguez's  
22 breathing shortly after Officer Butera stated that  
23 his blood pressure and pulse rate was through the  
24 roof?

25 A Yes. That was the first alert.

1           Q     Okay. As a trained paramedic, would you  
2 recognize that, blood pressure and pulse rate being  
3 through the roof, as evidence of tachycardia?

4           A     Yes.

5           Q     Okay. Are you aware that tachycardia can  
6 lead to cardiac arrest?

7           A     I am.

8           Q     Are you aware that tachycardia can lead to  
9 cardiac arrest, particularly in a person with an  
10 enlarged heart and atherosclerosis?

11          A     Of course.

12          Q     You agree that that certainly could be the  
13 reason why Fernando Rodriguez stopped breathing?

14          A     I do not agree with that.

15          Q     You don't agree that he could have stopped  
16 breathing because he had cardiac arrest following  
17 tachycardia?

18          A     Caused by five officers putting their body  
19 weight on him while he's prone on the asphalt.

20          Q     You agree that tachycardia can lead to  
21 cardiac arrest; correct?

22          A     Yes.

23          Q     You agree that tachycardia in a person who  
24 has an enlarged heart and arthrosclerosis could lead  
25 to cardiac arrest; correct?



1           A     Yes.

2           Q     And all those things were present with  
3     Fernando Rodriguez at the time of this incident with  
4     the police; correct?

5           A     No.

6           Q     Immediately before him stopping breathing;  
7     correct?

8           A     No.

9           Q     After Phillips deployed the TASER the  
10    first four trigger pulls using the -- after he  
11    deployed the dart mode -- dart prong mode -- let's  
12    state it that way --

13          A     Probe mode.

14          Q     -- probe mode -- better choice -- those  
15    were reasonable -- lawful and reasonable according  
16    to your report; correct?

17          A     Correct.

18          Q     And then you say that the use of the TASER  
19    in the drive-stun mode thereafter, which you've  
20    described as deployments 15, 16 and 17, were in  
21    violation of TASER Smart Use Considerations because  
22    of the circumstances.

23                 Is that right?

24          A     Correct.

25          Q     And that circumstance, as you have

1 described earlier, was that there were officers who  
2 had him handcuffed and, as you've described, under  
3 control?

4 A Correct.

5 Q Even though you can hear them talking  
6 about him continuing to be combative and attempting  
7 to bite them?

8 A He wasn't a threat to the officers.

9 Q Okay. And you're aware that Stroud  
10 ordered Officer Phillips to use the TASER during  
11 that time frame, during those deployments 15, 16 and  
12 17; correct?

13 A No.

14 Q You weren't aware of that, that during  
15 that time frame, that Officer Stroud ordered  
16 Phillips to use the TASER?

17 A I did not hear Stroud giving any orders to  
18 Phillips for the last three TASER deployments where  
19 he was drive-stunned.

20 Q Let's see. You have stated that from your  
21 review, you noticed that Stroud was the supervisor  
22 at the scene; correct?

23 A Of Henry County, yes.

24 Q And that he --

25 A I'm sorry. Of Hampton, of Hampton.

1           Q     He was the supervisor who ordered officers  
2 to put body weight on Fernando?

3           A     Correct.

4           Q     And that included Officer Phillips?

5           A     Yes.

6           Q     Okay. Now, you state in one of the bullet  
7 points of your opinions that you believe Fernando's  
8 ability to inhale and exhale was compromised by  
9 having multiple officers kneeling on him and  
10 compressing his head, neck, torso and limbs onto the  
11 pavement.

12                   So that's somewhat vague. I don't know  
13 what officers you're talking about and who was  
14 kneeling on where. Can you explain that, who do you  
15 believe --

16                   Can you identify the officers you believe  
17 were kneeling on Fernando and what part of his body  
18 they were kneeling on during this incident?

19           A     Sometimes it's hard to see which officer  
20 because all you see is a leg or a hand or an elbow.

21                   Phillips certainly had -- you can see him  
22 with his knee on his -- on Fernando's shoulder,  
23 between his shoulder and his head, on the neck area.  
24 And he's got his TASER in his right hand in the  
25 small of his back, and the TASER is activated. It's

1     turned on because you can see the light.  He hasn't  
2     energized it, but he --

3             Q     Right.

4             A     Phillips has certainly done that.

5             Q     Phillips's knee --

6                     It was his left knee, correct, that was on  
7     Fernando?

8             A     May I refer to my --

9             Q     We'll watch -- yes.

10            A     Thank you.

11            Q     And while you're looking for that, just  
12     think about this question.

13                    The knee, whether it was left or right,  
14     that was placed on him was placed on his upper back  
15     between his shoulder blades; correct?

16            A     In that region, yes.

17            Q     Did you ever see any images where the knee  
18     was actually on Rodriguez's neck?

19            A     So on Page 12 of my report, there's an  
20     image there, Phillips' left knee on Fernando's back  
21     between the shoulder blades and the neck.

22                    His left shoulder is blocking the image,  
23     and it's -- there's a shadow there; so it's kind of  
24     hard for me to tell exactly where the knee is or his  
25     lower leg is.

1           MR. WILLIAMS: Okay. We're going to  
2           mark that as Defendant's Exhibit 1.

3                           (Thereupon, marked for  
4                           identification purposes,  
5                           Defendant's Exhibit 1.)

6 BY MR. WILLIAMS:

7           Q       Okay. I'm going to hand you what I've had  
8           the court reporter mark as Defendant's Exhibit 1, a  
9           photograph taken from the Lewis video. And do you  
10          want to take a look at it? It's timestamped from  
11          the video.

12                   Does that look familiar to you from -- as  
13          an image from the video you reviewed?

14          A       It does.

15          Q       Okay. Would you agree that that shows  
16          that Lewis -- that Phillips's left knee is on  
17          Rodriguez's upper back between his shoulder blades,  
18          not on his neck?

19          A       In this image here, it does appear that  
20          his knee is on his upper back between his shoulder  
21          blades, in close proximity --

22                   I mean, yes, but -- I agree.

23          Q       And that's where he kept his knee from the  
24          point that they got Fernando somewhat under control  
25          and he was trying to restrain him; correct?

1           In other words, do you ever see him move  
2 his knee to another part of his -- of Fernando's  
3 body?

4           A     But in some of the Lewis body cam, the  
5 image changed because --

6           So I don't know that Lewis did not -- in  
7 another image that may or may not have been captured  
8 by the body cam, that his knee didn't move.

9           Q     Okay. Well, we'll watch the video, and  
10 I'll let you show me where you think it, if that  
11 ever, occurs.

12                               (Thereupon, marked for  
13 identification purposes,  
14 Defendant's Exhibit 2.)

15 BY MR. WILLIAMS:

16           Q     But for now, let me hand you what's been  
17 marked as Defendant's Exhibit 2.

18           MR. JOHNSON: Can I see it first?

19 BY MR. WILLIAMS:

20           Q     Do you recognize that?

21           MR. JOHNSON: Okay.

22 BY MR. WILLIAMS:

23           Q     Do you recognize that as being from the  
24 Lewis video?

25           A     Okay.

1           Q     And if you don't, I'll just tell you, just  
2     for the record -- and we can verify it, but -- that  
3     it was taken from the Lewis video. It was just a  
4     still shot we made from the Lewis video.

5           A     Okay.

6           Q     And you see where Officer Phillips's knee  
7     is in that picture?

8           A     I mean, I see a hand.

9                     Is that a hand there with a watch or  
10    something?

11          Q     Well, do you see anybody having any part  
12    of their body on Rodriguez's neck in that picture?

13          A     No.

14          Q     Okay. That's the point.

15                     MR. JOHNSON: And I just want to say  
16    for the record, if I can, I'm not sure the  
17    lighting in that document is the best.

18    BY MR. WILLIAMS:

19          Q     Well, can you see the lighting? Can you  
20    see his neck -- Rodriguez's neck in that picture?

21          A     Yes.

22          Q     Okay. And you can see there's no knee on  
23    his neck in that picture; correct?

24          A     Well -- yes.

25                     MR. WILLIAMS: Okay. All right. Let's

1       take a break. I want to have a little bit  
2       of a lunch break -- it's about 1:00  
3       o'clock -- maybe just 30 minutes. I'll go  
4       downstairs. That's pretty quick. And we'll  
5       start back up at -- shoot for 1:30. And I  
6       don't think I'll have that much more, maybe  
7       an hour.

8               MR. JOHNSON: Okay.

9                       (Whereupon, there was a lunch  
10                      recess in the deposition from  
11                      12:56 p.m. to 1:52 p.m.)

12              MR. WILLIAMS: So we can go on the  
13      record now.

14      BY MR. WILLIAMS:

15              Q       Dr. Lowe, what I want to do is play this.  
16      And then at some point -- I'm going to get up to  
17      where I'm going to stop it, and I'm going to ask you  
18      some questions, basically what we are seeing, and  
19      have you tell me, you know, what you're seeing  
20      there.

21                      Okay?

22              A       Yes, sir.

23              Q       Do you recognize this? Just for the  
24      record, this is the Lewis body-cam video.

25              A       Yes.



1 Q And you've seen --

2 This is the one you've seen before;  
3 correct?

4 A Yes.

5 Q All right. We're already a minute and  
6 19 seconds into it. They've already tasered.

7 But my -- our guys, Officer Phillips and  
8 Officer Butera, are not present yet?

9 A Correct.

10 Q Okay. So we'll just start it from here.

11 (Video played.)

12 MR. WILLIAMS: Okay. I'm going to stop  
13 it right here for a second.

14 (Video stopped.)

15 BY MR. WILLIAMS:

16 Q Do you know which of those officers are  
17 whom?

18 A So the person standing is Stroud, and the  
19 person whose camera it is is Lewis.

20 Q Yep. So the one -- and we're talk -- that  
21 was saying "we're going to get you some help" is  
22 Officer Lewis, because you heard that voice but not  
23 from the guy that you can see; right?

24 A I think they were both --

25 Weren't both officers articulating --

1 Q Talking at different times.

2 A Yes.

3 Q Yeah. Okay.

4 (Video played.)

5 (Video stopped.)

6 BY MR. WILLIAMS:

7 Q Do you know who that officer is who just  
8 arrived?

9 A So that's Bowlden.

10 Q Bowlden.

11 A Bowlden.

12 Q Also with City of Hampton; right?

13 A Correct.

14 (Video played.)

15 (Video stopped.)

16 BY MR. WILLIAMS:

17 Q And that was Officer Stroud who said,  
18 we're going to get you an ambulance and figure out  
19 what's going on?

20 A Um-hum.

21 Q That's yes?

22 A Yes, yes.

23 (Video played.)

24 (Video stopped.)

25

1 BY MR. WILLIAMS:

2 Q And that was Officer Stroud that mentioned  
3 the ambulance again at 22:14, approximately 56?

4 A Yes.

5 (Video played.)

6 (Video stopped.)

7 BY MR. WILLIAMS:

8 Q You recognize that's Rodriguez saying, hit  
9 him with the TASER, hit him with the TASER?

10 A Yes, mocking the officers.

11 (Video played.)

12 (Video stopped.)

13 BY MR. WILLIAMS:

14 Q And that was at 22:15, approximately  
15 44 seconds, on the date stamp -- timestamp?

16 A Yes.

17 (Video played.)

18 (Video stopped.)

19 BY MR. WILLIAMS:

20 Q And you hear what Rodriguez said there?  
21 That was him cursing at the officers --

22 A Yes.

23 Q -- at 22:15:48?

24 A Yes.

25 (Video played.)

1 (Video stopped.)

2 BY MR. WILLIAMS:

3 Q Okay. You recognize another officer  
4 walking up at that point?

5 A Yes. That is Henry County  
6 Officer Phillips.

7 Q That was Phillips.

8 So he arrived at approximately 22:16 -- or  
9 walked up at approximately 22:16:04-ish; right?

10 A Agreed.

11 Q Okay. And at that time you heard a TASER  
12 being deployed and you heard clicking with the  
13 TASER; correct?

14 A Correct.

15 Q And that indicates there's not a good  
16 connection and no electricity being delivered?

17 A Correct.

18 (Video played.)

19 (Video stopped.)

20 BY MR. WILLIAMS:

21 Q And do you know who deployed the TASER  
22 there?

23 A That's Bowlden.

24 Q Okay.

25 (Video played.)

1 (Video stopped.)

2 BY MR. WILLIAMS:

3 Q Okay. Now, as shown right there, before  
4 the TASER is deployed at 22:16, approximately  
5 25 seconds, even after the TASER initially deployed  
6 by Bowlden, Rodriguez is still trying to move away;  
7 correct?

8 A Correct.

9 Q So he's still resisting and not being  
10 compliant; correct?

11 A He's trying to move away. I would not say  
12 he's resisting.

13 Q Okay. He's not following the officers'  
14 commands to roll over; correct?

15 A Correct.

16 (Video played.)

17 (Video stopped.)

18 BY MR. WILLIAMS:

19 Q All right. At 22:16, approximately  
20 50 seconds, that's Officer Stroud talking to  
21 Officer Phillips; correct?

22 A We can listen to it again, but I thought  
23 it was Lewis maybe saying --

24 Q It's Lewis? Okay. I see what you --  
25 Yeah. I wasn't sure about that, either.

1 Let's see. I hate to move these things because it's  
2 probably going to --

3 (Video played.)

4 MR. WILLIAMS: Well, I don't know if I  
5 got --

6 Did I actually go backwards?

7 (Video stopped.)

8 MR. WILLIAMS: Did it go backwards or  
9 are we still going forward?

10 MR. JOHNSON: I'm not sure.

11 MR. WILLIAMS: Let's try this. All  
12 right. Now I think I have --

13 (Video played.)

14 (Video stopped.)

15 BY MR. WILLIAMS:

16 Q All right. At 22:17:21, Rodriguez is  
17 still moving around, moving on the pavement;  
18 correct?

19 A Yes.

20 Q And is still on his back, hasn't been --  
21 hasn't moved over into his prone position; correct?

22 A Correct.

23 (Video played.)

24 (Video stopped.)

25

1 BY MR. WILLIAMS:

2 Q All right. It's at this point, around  
3 22:17:45, where the officers go in to put hands on  
4 to try to control him?

5 A Yes, after Phillips deployed his X2.

6 And I men -- we mentioned earlier about  
7 you can see the electricity, and I see it here.

8 Q Okay. Let me see if I can back up and  
9 let's --

10 A You can -- you can see the arcing from the  
11 probes that are in his body from Phillips's X2.

12 Q Okay.

13 (Video played.)

14 BY MR. WILLIAMS:

15 Q That's Bowlden deploying right there at  
16 22:17:26; correct?

17 A With a drive stun.

18 Q Right. Okay.

19 (Video stopped.)

20 BY MR. WILLIAMS:

21 Q And after that deployment, at 22:17:34, it  
22 shows Rodriguez still not complying and still not  
23 moving over to his stomach; correct?

24 A Correct.

25 (Video played.)

1 (Video stopped.)

2 BY MR. WILLIAMS:

3 Q Okay. Now, is that deployment by  
4 Officer Phillips, the X2?

5 A Yes.

6 Q Okay. I just missed where you're talking  
7 about the -- seeing the flashes.

8 Tell me when you see that.

9 (Video played.)

10 (Video stopped.)

11 A It's further up.

12 BY MR. WILLIAMS:

13 Q Oops. I thought I went back, but I must  
14 have went forward. Yeah. It's jumping.

15 A Try it there.

16 Q Okay.

17 (Video played.)

18 BY MR. WILLIAMS:

19 Q Tell me, so I can stop it, when it gets to  
20 that point when you see it.

21 A As soon as the image goes to him laying on  
22 the ground. There.

23 (Video stopped.)

24 BY MR. WILLIAMS:

25 Q Okay. So are you talking about seeing



1 those light -- that light --

2 A Yeah.

3 Q -- dots and streak?

4 A Yes.

5 Q You're saying that you're seeing the  
6 deployment between the prongs?

7 A Yes. And there's one on his upper thigh,  
8 too, on his thigh, so where they're communicating  
9 with each other.

10 (Video played.)

11 (Video stopped.)

12 BY MR. WILLIAMS:

13 Q But you see that immediately Rodriguez is  
14 still moving around as that noise is occurring from  
15 the TASER; correct?

16 A And I would expect him to.

17 Q He's not achieving NMI, then?

18 A That's possible, but it's only going to  
19 affect the muscles and nerves on that side of his  
20 body. So even though that side of the body is  
21 locked up, you can still move the other side. It  
22 only immobilizes the muscles and nerves between the  
23 positive and the negative probe.

24 Q Okay.

25 (Video played.)

1 BY MR. WILLIAMS:

2 Q Tell me if you see again any arcing or the  
3 lights that you referred to when there's the TASER  
4 deployment triggered.

5 A Yes, sir. I will.

6 (Video stopped.)

7 BY MR. WILLIAMS:

8 Q Now, we heard more clicking.

9 And when you're hearing clicking, like,  
10 from the TASER, then there's not good connection;  
11 correct?

12 A Correct.

13 Q Okay. Do you know that that was one of  
14 Officer Phillips's TASER pulls?

15 A I'm assuming so, that one of the probes  
16 might have come out or maybe one of the wires had  
17 broke.

18 When you've got four officers there plus  
19 Fernando, when you turn him on his side, it's easy  
20 for one of the officers to have stepped on a wire.  
21 They're just copper wires. It's easy to break them.

22 Q In your report, you refer to timestamps,  
23 and you've got individual numbers.

24 A Yes.

25 Q If you look at Page 9, in other words,

1     you've got: Officers make physical contact to  
2     restrain/handcuff Fernando at 6:32.

3             A     Yes.

4             Q     What does that correlate to?

5             A     So I'm using the -- the time of the  
6     video --

7             Q     Okay. So --

8             A     -- not the time on the display.

9             Q     You're using this time up here where the  
10    arrow is --

11            A     Yes, yes.

12            Q     -- playing on the computer?

13            A     Yes.

14            Q     Okay. I figured that's what it was. All  
15    right. So it's 6 -- okay.

16                    So you noted in your report at 7:20 --  
17    which we're at 7:26 up here on the screen right now.  
18    But you noted: At 7:20 Stroud commanded "hit him  
19    again" and Phillips delivers another trigger pull  
20    reenergizing the X2 previously deployed right  
21    cartridge for five seconds.

22            A     Yes.

23            Q     And that's the clicking we heard; correct?

24            A     Yes.

25            Q     Okay. Which indicates no good connection?

1           A     At least for one of the probes. But if  
2 he's dry -- I don't know that he's not drive-stunned  
3 him at the same time because they're all right  
4 there. If I was the X2 operator -- but I'm assuming  
5 he did not.

6           Q     Right.

7           A     It's very hard to tell.

8           Q     Okay.

9                                 (Video played.)

10                                (Video stopped.)

11 BY MR. WILLIAMS:

12           Q     Okay. And then you've got in your report,  
13 and as we've just heard here, at 7:29 on that and  
14 timestamp 22:18:43, that's when Stroud yells "hit  
15 him again" and Phillips reenergizes his TASER X2  
16 deployed right cartridge for five seconds, according  
17 to your report?

18           A     Yes. And the other thing with the  
19 clicking noise is, now that the TASER is closer to  
20 the probes, the speaker is going to pick it up  
21 because it's not seven feet away. But now that  
22 they're all there, I mean, literally --

23           Q     Closer to Lewis' --

24           A     Yeah.

25           Q     -- body cam?

1           A     The probes are right there with the  
2     electricity going through them. If the TASER is  
3     close to it, the speaker within the TASER that  
4     captures the audio for this is going to be closer,  
5     so it's going to sound louder.

6           Q     The speaker that's within the TASER?

7           A     Well, there's a microphone. The micro --

8           Q     What we're listening to is Lewis' body-cam  
9     video.

10          A     Well, okay, his body cam.

11          Q     Yeah.

12          A     But they're all bent over there together.  
13                 Yes. You're correct. I stand corrected.

14          Q     This is not a TASER video --

15          A     No, no.

16          Q     -- from the weapon.

17          A     No, no.

18          Q     I know what you're talking about, and  
19     that's not what this is.

20          A     But it's -- the speaker for the TASER --  
21     body cam is now closer to the probes and to the  
22     TASER, so that's why it would sound louder.

23          Q     Um-hum.

24          A     Does that make sense?

25          Q     But it's still a clicking noise, which

1 normally you wouldn't hear if there was good probe  
2 spread --

3 A Right.

4 Q -- and good contact; correct?

5 A Yes.

6 Q Okay. And you also see from the video  
7 that during this time when there's the clicking of  
8 the attempted TASER deployment, that Rodriguez is  
9 moving around?

10 A Um-hum.

11 Q Yes?

12 A Yes, yes.

13 Q Sorry.

14 (Video played.)

15 (Video stopped.)

16 BY MR. WILLIAMS:

17 Q Okay. At timestamp on the video at  
18 22:18:55 and then on the computer that you've noted  
19 in your report 07:41, Stroud says "somebody sit on  
20 him."

21 Correct?

22 A Correct.

23 Q And according to what you've written, you  
24 saw that as Stroud issuing commands to the other  
25 three officers to sit on Fernando; right?

1           A     Correct.

2           Q     Okay. Now, tell me, do you see officers  
3 actually sitting on him from this point forward?  
4 Let me -- tell me if you do and who.

5                     (Video played.)

6           A     So there's a knee on his -- between his  
7 shoulder blades.

8                     (Video stopped.)

9 BY MR. WILLIAMS:

10          Q     All right.

11          A     I don't know who that is.

12                     (Video played.)

13                     (Video stopped.)

14 BY MR. WILLIAMS:

15          Q     Okay. It may well be Officer Phillips  
16 putting a knee on him between his shoulder blades;  
17 right?

18          A     Yes.

19          Q     That's probable?

20                     And the knee that we saw before we got to  
21 this point was between the shoulder blades, upper  
22 back, not on the neck; correct?

23          A     Correct.

24          Q     Okay. And you would agree that at that  
25 point Rodriguez is not even in the prone position;

1 correct?

2 A He's, you know, transitioning from being  
3 on his hands and knees with his chest and head on  
4 the ground. They just haven't pulled his -- his  
5 right knee is anchored to the ground, so he's not  
6 flat prone.

7 Q For lack of a better phrase, his butt is  
8 up in the air; correct?

9 A His butt is up in the air.

10 Q So he's not prone, not on his stomach, on  
11 the ground at that point; correct?

12 A Correct.

13 Q Okay.

14 (Video played.)

15 (Video stopped.)

16 BY MR. WILLIAMS:

17 Q And at that point, even up to where we are  
18 now at 22:19:17, there's only one officer who has a  
19 knee up on his upper back between the shoulder  
20 blades; correct?

21 A Yes, but you can't see any of the  
22 extremities.

23 Q Yeah. So the officers could have had some  
24 weight on extremities, but only one officer has any  
25 weight on his torso, either stomach or back area;



1 correct?

2 A Officer Phillips does, yes.

3 Q Right.

4 (Video played.)

5 (Video stopped.)

6 BY MR. WILLIAMS:

7 Q All right. At 22:19:39 -- and I'll just  
8 stick with that timestamp on the actual video --  
9 Rodriguez is still in that same position with his  
10 butt up in the air, and he's still clearly breathing  
11 and talking; correct?

12 A It looks as if his right knee has now laid  
13 out. He's more prone now than he was a moment ago.

14 Q But he's still not down fully onto his  
15 stomach, correct, at 22:19:39?

16 A My assessment is, he is on his stomach.

17 Q You think at 22:19:39 he's already fully  
18 down all the way prone on his stomach?

19 A I think his stomach is on the ground.

20 Q Let's watch it.

21 (Video played.)

22 (Video stopped.)

23 BY MR. WILLIAMS:

24 Q Right there, does it not look like his  
25 butt is still hiked up in the air? You can see a

1 knee joint right there.

2 A His butt may not be all the way on the  
3 ground, but his stomach is on the ground.

4 Q So his full body weight from his -- his  
5 torso, bottom half of it's not fully on the ground;  
6 correct?

7 A It doesn't look like his right buttocks is  
8 on the ground.

9 (Video played.)

10 (Video stopped.)

11 BY MR. WILLIAMS:

12 Q See where he's turned up on his side a  
13 little bit right there at 22:20:05; right?

14 Let me take it back a little bit. This is  
15 always off when you try to do --

16 What did I say? 22:20:05?

17 A Yes.

18 Q Yeah.

19 (Video played.)

20 (Video stopped.)

21 BY MR. WILLIAMS:

22 Q So 22:20:05, you would agree that at least  
23 his knee -- right knee was still propping his butt  
24 up a little bit off the pavement?

25 A Correct.

1           Q     And then at that point, at 22:20:05, he's  
2 actually somewhat turned himself to his side;  
3 correct?

4           A     Yes. And if I could add.

5           Q     Yeah.

6           A     So it looks to me that that's a  
7 consequence of them trying to straighten his leg out  
8 and put his right leg in closer proximity to his  
9 left leg so they can get the shackles on.

10          Q     And that, in fact, turns him and certainly  
11 relieves any of his own body-weight pressure on his  
12 diaphragm area and his stomach; correct?

13          A     Momentarily, until the legs -- the ankles  
14 are adjacent to each other.

15                                 (Video played.)

16                                 (Video stopped.)

17 BY MR. WILLIAMS:

18          Q     Okay. You've heard in the video Rodriguez  
19 is yelling, clearly able to breathe at that point;  
20 right?

21          A     Just because he's making verbal sounds,  
22 he's yelling, doesn't mean he's breathing.

23          Q     He's still got air in his lungs to be able  
24 to make noises to male -- especially to yell;  
25 correct?

1           A     And the challenge is, is when you're  
2     exhaling to make noise, your lung -- your rib cage  
3     and lungs are getting smaller because you're getting  
4     air out of your lungs. And with body weight on  
5     people, the lungs -- it's more challenging to  
6     inhale. It's harder to breathe when people are on  
7     top of you.

8           Q     And when he continues to make statements,  
9     if he does, as we watch the video, after this, that  
10    would mean he's still getting air into his lungs to  
11    be able to yell or scream or make audible noises;  
12    correct?

13          A     Correct.

14                                 (Video played.)

15                                 (Video stopped.)

16   BY MR. WILLIAMS:

17          Q     Do you hear Stroud say again to officers  
18    "put weight on him"?

19          A     I did. And I also heard Fernando say,  
20    "oh, fuck, get off of me." And it's clearly he has  
21    less -- it's not as loud as he had been previously.

22          Q     Do you know how much body weight is  
23    required to compress someone so that it  
24    significantly interferes with their ability to  
25    oxygenate?

1           A     I do not.

2           Q     Regardless of whether it causes difficulty  
3     breathing, which can happen for a number of reasons  
4     and people can still oxygenate, you don't have any  
5     ability to tell what his oxygenation level was at  
6     this point, do you?

7           A     No.

8                                 (Video played.)

9                                 (Video stopped.)

10    BY MR. WILLIAMS:

11           Q     Tell me --

12                         Now, can you see where Officer Phillips  
13     has placed his knee at that point, 22:21:08/09?

14           A     It appears to be in approximately the same  
15     place, on his upper back between the shoulder  
16     blades.

17           Q     Between the shoulders, right.

18           A     But you can also see other officers  
19     have --

20                         There's an ungloved hand on his right  
21     shoulder, and there's a gloved hand further down his  
22     back.

23           Q     And those -- they're just basically  
24     touching him, correct, with their hands?

25           A     Well --

1           Q     Like, the one at the shoulder up there is,  
2     like, two fingers that touch.

3                                 (Video played.)

4     BY MR. WILLIAMS:

5           Q     Let me move it on a little bit more so you  
6     can see. I know it's hard to see.

7                                 (Video stopped.)

8           A     And there's an officer standing on his  
9     arm, it looks like.

10    BY MR. WILLIAMS:

11           Q     The other officers, whether it's Stroud,  
12     Lewis, they're on the extremities, hands, arms --  
13     correct --

14           A     Yeah.

15           Q     -- during this period of time after they  
16     get some cuffs on him?

17           A     By all indications. It's not clear.

18           Q     And, in fact, one officer talks about  
19     stepping on the -- on the handcuffs to -- on the  
20     chain to hold the handcuffs; correct?

21           A     I think one officer is standing on the  
22     handcuffs, and one was standing on -- Butera was  
23     standing on the leg irons.

24           Q     Right. And only --

25                         Again, at this point, 22:21:18, only

1 Officer Phillips with one knee on his upper back  
2 between the shoulder blades, correct, one knee?

3 A And other than -- and the -- and the  
4 hands.

5 Q And the hand, which you don't know whose  
6 hand that is?

7 A I don't know whose.

8 Q It could be Officer Phillips, too?

9 (Video played.)

10 (Video stopped.)

11 BY MR. WILLIAMS:

12 Q Okay. Even at 22:21:25 -- 24/25,  
13 Rodriguez is getting enough air to where he can yell  
14 out pretty loudly; correct?

15 A Correct.

16 (Video played.)

17 (Video stopped.)

18 BY MR. WILLIAMS:

19 Q And you see that arm there that's on  
20 Rodriguez's shoulder?

21 A Yes.

22 Q It's basically just trying to hold that  
23 arm down; correct?

24 A Well, I can see the tension on  
25 Fernando's --

1 Q Yeah.

2 A -- skin.

3 Q On his shoulder; right?

4 A Yes, his upper arm and his shoulder. I  
5 mean, I can see the tension there where somebody's  
6 pressing down.

7 Q And you can see that Fernando's arm is up,  
8 elbow is up, the pavement is down below; correct?

9 A Yes. And I -- and I would say that that's  
10 a consequence of him trying to get pressure off his  
11 back so he can expand his lungs.

12 Q He's still pushing up; correct?

13 A He's trying -- he's wanting to breathe  
14 deep.

15 Q Or he's wanting to get away from the  
16 officers; right? Could be either/or.

17 You don't know if he's pushing up because  
18 he's trying to breathe or he's pushing up because  
19 he's wanting to get them off of him?

20 A And I would say, Counselor, that if you're  
21 desperate for oxygen, that's prob -- that's his only  
22 focus, is to breathe deep, because he needs oxygen  
23 in his lungs.

24 Q Tell me what physically you see on this  
25 video that indicates he's desperate for oxygen up to



1 this point.

2 A What I see is he's trying to push himself  
3 off to get the pressure off his chest and his  
4 stomach so that he can take a deep breath. You  
5 can --

6 I can hear from his tones that the volume  
7 of his voice is diminished. He -- I think he's  
8 becoming desperate for oxygen. And I've been in  
9 that situation myself as a patient.

10 (Video played.)

11 BY MR. WILLIAMS:

12 Q Another clicking sound of the TASER  
13 attempting to be used, right --

14 A Yes.

15 Q -- at 22:21:37?

16 (Video stopped.)

17 BY MR. WILLIAMS:

18 Q All right. Right there, you see in this  
19 one a clear view of Officer Phillips with his knee  
20 on Rodriguez's back.

21 You agree?

22 A And a hand above Phillips' knee closer to  
23 the head. I've got another hand, another hand, it  
24 looks like a knee on Fernando's left buttocks.

25 So I've got at least three arms and two

1 knees on that -- on that image.

2 (Video played.)

3 (Video stopped.)

4 BY MR. WILLIAMS:

5 Q Okay. You can see right there that  
6 Fernando, at 22:21:38, has still got his arm --  
7 elbow bent and he's pushing up; correct?

8 A Yes.

9 (Video played.)

10 (Video stopped.)

11 BY MR. WILLIAMS:

12 Q And the officer commenting "he is not  
13 getting up," that's a indication that they feel like  
14 he's still trying to get up; correct?

15 You would agree with that?

16 A I agree with the off -- I agree I heard  
17 what the officer said. I don't think any reasonable  
18 officer, with five officers present with somebody  
19 who's been shackled on their legs and handcuffed on  
20 their hands, would have any thought that he's going  
21 to get up and escape and assault them.

22 Q I didn't ask that, but that he's trying to  
23 get up?

24 A To breathe. That's my assessment,  
25 Counselor.

1           Q     He never said anything about breathing,  
2 did he?

3           A     No.

4           Q     Did Rodriguez say anything about not being  
5 able to breathe?

6           A     No.

7           Q     He's talking. He's saying "F you" to  
8 them; right?

9           A     That was significantly earlier in the  
10 event.

11          Q     That's just a few seconds earlier.  
12                 What was preventing him from saying I  
13 can't breathe if he was not able to breathe at that  
14 point?

15          A     I don't know what was through his mind. I  
16 don't know why he didn't say I can't breathe.

17          Q     Well, you certainly would expect it  
18 because he's articulating. You heard him say "F  
19 you" and "get off of me" just a few seconds earlier;  
20 right?

21          A     But I think that -- those comments were  
22 significantly earlier in the physical altercation  
23 before he's been compressed for some period of time  
24 where now his -- now he's got less oxygen in his  
25 lungs.

1           Q     Um-hum. And you know that because of  
2 what?

3           A     I know that from my years of training,  
4 treating COPD patients with emphysema and asthma  
5 patients. I know that from being a patient in the  
6 hospital where I couldn't catch my breath and --

7           Q     Okay. It couldn't be from the struggle  
8 when he's trying to push up and trying to get away  
9 from these officers' grasps?

10          A     He's not struggling to get away from the  
11 officers or to assault the officers. He's  
12 struggling to breathe, and it wasn't recognized,  
13 sadly.

14                                 (Video played.)

15                                 (Video stopped.)

16 BY MR. WILLIAMS:

17          Q     Okay. At 22:22, approximately 21, it's  
18 Officer Stroud that says that he's trying to bite me  
19 and if he -- he says he's going to kick his teeth  
20 in?

21          A     I heard that.

22                                 (Video played.)

23                                 (Video stopped.)

24 BY MR. WILLIAMS:

25          Q     Okay. So he's --

1                   You heard Rodriguez talking there at  
2 22:22:30 and 31/32; correct?

3           A     Yes.

4           Q     Okay. He hasn't said anything about not  
5 being able to breathe; correct?

6           A     He did not say that.

7           Q     Okay. At this point, up to this time at  
8 22:22:32, have you ever seen Officer Phillips' knee  
9 anywhere other than upper back between his shoulder  
10 blades?

11          A     No.

12                                 (Video played.)

13                                 (Video stopped.)

14 BY MR. WILLIAMS:

15          Q     22:22, approximately 49/50, Stroud again  
16 says "huh-uh, dude" indicating what to you?

17          A     Whatever Stroud saw that he wanted to  
18 restate.

19          Q     That Rodriguez was trying to bite him  
20 again?

21          A     Well, I heard him say "if you bite my  
22 foot." But he's got a leather police duty boot on,  
23 I'm assuming; so it's not like he's out there with  
24 flip-flops and he's going to get bitten on the toes.  
25 I don't know how dangerous a set of teeth is if

1     you're wearing leather work boots.

2                                 (Video played.)

3                                 (Video stopped.)

4     BY MR. WILLIAMS:

5             Q     Have you heard them call for an ambulance  
6     yet?

7             A     They -- it was much earlier.

8             Q     And he just said, trying to get an  
9     ambulance here, or something to that effect?  
10                That was Stroud that just said that?

11            A     Yeah.

12            Q     Okay. So they clearly are thinking an  
13     ambulance is going to be there at any moment;  
14     correct?

15            A     It never can get there fast enough,  
16     Counselor.

17            Q     They're, obviously, waiting on an  
18     ambulance to arrive?

19            A     They're very anxious to transfer care of  
20     Fernando to the paramedics, yes.

21                                 (Video played.)

22            A     But if I could insert --

23                                 (Video stopped.)

24            A     So this is where I'm hearing Fernando  
25     grunting, where now he's not able to talk. He's not

1     able to scream and cuss.

2     BY MR. WILLIAMS:

3             Q       Um-hum.

4             A       And the fact that Officer Phillips has his  
5     knee on his back between the shoulder blades --

6                     Well, you know, my heart is right about  
7     here, so on the other side of my backbone where, you  
8     know, if I was Fernando, that's where Phillips's  
9     knee would be is right above my heart if I'm  
10    facedown into the asphalt; so compressing the heart,  
11    the lungs, your trachea. All that is right there  
12    where your back is.

13            Q       Your breathing is primarily done through  
14    your diaphragm; correct?

15            A       Yes. But if it's --

16            Q       Your chest cavity moves very little. It's  
17    the diaphragmatic breathing that is important;  
18    correct?

19            A       Correct. But if everything is being  
20    compressed, that makes it hard for the diaphragm to  
21    do its job because there's nothing for the diaphragm  
22    to expand upon.

23            Q       Are you aware of the fact that there's  
24    numerous studies that have been done that indicate  
25    that it takes over 400 pounds of pressure to

1 significantly impair somebody's breathing to deprive  
2 them of oxygen?

3 A I'm sure it takes a lot, yes.

4 Q Yeah. And you would agree that  
5 Officer Phillips is not even imparting his entire  
6 body weight during the time he's got his knee on  
7 Rodriguez's back; correct?

8 A I would not agree with that.

9 Q He's squatting with one leg on the  
10 pavement, and he's putting -- has the other knee on  
11 Fernando; correct?

12 A But I don't know where he's applying his  
13 mass. I don't know which --

14 Q It's got to be distributed between the two  
15 of them. You just don't know how much; right?

16 A Correct. It doesn't have to be  
17 distributed equally. And I --

18 Q Right.

19 A And I would suggest that he would -- he  
20 would have put more on his knee than on his foot.

21 Q But, in any event, it's not more than he  
22 weighs. So if he weighs 200/210 pounds, he's not  
23 putting the entire amount of his weight on  
24 Rodriguez's back; correct?

25 A Correct, but the cumulative effect of



1 doing it for five seconds versus several minutes.

2 Q Does what?

3 A It becomes cumulative. I think it becomes  
4 harder for Fernando to breathe.

5 Q And you base that on your own years of  
6 experience?

7 A Absolutely, because I've watched people  
8 suffocate who have had respiratory distress from  
9 injury and trauma.

10 Q Have you ever in your experience, though,  
11 watched somebody with body-weight pressure on their  
12 back get to where they couldn't breathe and die  
13 because of the weight on their back?

14 A Not with the pressure on theirsself.

15 Q Right. You have not had that experience;  
16 correct?

17 A No, because we've already rescued them  
18 from whatever pressure was affecting their  
19 breathing, and now they're on the stretcher in the  
20 back of the ambulance.

21 (Video played.)

22 (Video stopped.)

23 BY MR. WILLIAMS:

24 Q You hear the officers struggling to  
25 breathe, can you hear that on the video, both Lewis

1 and other officers around him?

2 A I do.

3 Q Yeah. And they're not suffering from  
4 positional asphyxia, are they?

5 A No, but I think it's a demonstration of  
6 how much pressure they applied and how much force  
7 they've used, the fact that they themselves are  
8 having to take deep breaths.

9 Q It's a result of their physical exertion;  
10 correct?

11 A Correct.

12 Q Yeah.

13 (Video played.)

14 (Video stopped.)

15 BY MR. WILLIAMS:

16 Q At 22:24:18/19, Rodriguez is still able to  
17 take in air and yell out; correct?

18 A Correct.

19 Q And at this point the knee has been on  
20 his -- between his upper shoulders for a couple of  
21 minutes or so; right?

22 A Correct.

23 Q So, obviously, it hasn't deprived him of  
24 his ability to get some air in his lungs to be able  
25 to yell out; correct?

1           A     I don't agree with that.

2           Q     You don't agree that he had air in his  
3     lungs to be able to yell out what we just heard on  
4     the video?

5           A     And my assessment is, the reason he has  
6     air in his lungs to yell out is he got some relief,  
7     because as the officers -- their verbal banter  
8     has -- they've stopped talking about Fernando, and  
9     now they're talking about imagine-fest, this is the  
10    first time I've seen a naked person.

11                Because the officers are relaxed, I would  
12    imagine they would also become -- not only are they  
13    verbally relaxed, but I think they're physically  
14    relaxed. And I think because of that, they've stood  
15    up and they've taken --

16                They've done something to alter the  
17    pressure that they were putting on Fernando, and now  
18    he's gotten a little bit -- he was able to take a  
19    breath.

20           Q     Do you ever see Officer Phillips stand up  
21    in that video up to this point after he put his knee  
22    on his back?

23           A     At some point he will stand up, but I  
24    don't know what point --

25           Q     Right. He hasn't to this point, has he?

1           A       But he may very well have transitioned.

2                   But it's clear that Fernando got a burst  
3 of oxygen and is -- because he wasn't saying  
4 anything for 45/60 seconds, he was doing the  
5 grunting, because he couldn't take deep breaths, and  
6 now he has.

7                   That's my assessment of why he's said that  
8 because he got some relief. The officers are not  
9 only verbally relaxed, but I think they're  
10 physically relaxed, as well.

11                  You mentioned earlier about them  
12 breathe -- the officers having trouble breathing.  
13 Well, shortly here they're going to talk about that  
14 their feet were cramping because they were standing  
15 on top of him. They're tired.

16           Q       Sure.

17                                   (Video played.)

18                                   (Video stopped.)

19 BY MR. WILLIAMS:

20           Q       All right. There. We've seen up to this  
21 point in the video, 22:24:36, get back to seeing  
22 Officer Phillips's positioning.

23                   He's in the same position he had been when  
24 we saw him earlier in the video; correct?

25           A       Approximately.

1           Q     As far as his knee between the shoulder  
2 blades and upper back; correct?

3           A     And then he's got his left hand pushing  
4 down on his right shoulder --

5           Q     Right.

6           A     -- and he's got the TASER tased in his  
7 small of his back.

8           Q     On his back, right.

9           A     And then you see other arms -- other --

10          Q     Holding down his legs --

11          A     Yeah.

12          Q     -- down toward the bottom, towards his  
13 knee joint; right?

14          A     Yes. But most of the torso pressure is  
15 being applied by Officer Phillips.

16          Q     On his upper back?

17          A     Um-hum.

18          Q     Right?

19          A     Yes.

20                                (Video played.)

21                                (Video stopped.)

22 BY MR. WILLIAMS:

23          Q     You could -- before I stopped it, it got a  
24 little blurry.

25                       But before I stopped it, did you see

1 Rodriguez's neck? Did you see his head and his  
2 neck?

3 A I see his head.

4 Q Okay. Let's back it up just a little bit.

5 (Video played.)

6 BY MR. WILLIAMS:

7 Q Watch there, and you'll see it. We'll get  
8 a little neck light.

9 COURT REPORTER: I'm sorry. I didn't  
10 hear you.

11 MR. WILLIAMS: I'm sorry. We'll get a  
12 little light.

13 (Video stopped.)

14 BY MR. WILLIAMS:

15 Q Well, I'll stop it here.

16 A It almost looks like somebody's hand is  
17 forcing his head down.

18 Q I think I may have gone past where I  
19 meant.

20 But at any point have you seen  
21 Officer Phillips move his knee to Rodriguez's neck,  
22 from what you can tell on the video?

23 A No. It's primarily on his --

24 Q He stayed pretty much in the same area;  
25 correct?

1           A     Yes.

2           Q     And you said that it looks like somebody  
3 may have been taking his hand and putting it up to  
4 the back of his head, of Fernando's head?

5           A     It looks like --

6           Q     Hard to tell?

7           A     -- a gloved hand. It's got -- looks like  
8 it's got a black glove on it.

9           Q     And we just heard one of the officers say  
10 "I'm glad you guys got here."

11                   Is this the time, you think, when the EMS  
12 first arrived?

13          A     They arrived shortly after this.

14          Q     22:25:33?

15                               (Video played.)

16          A     Yeah.

17                               (Video stopped.)

18 BY MR. WILLIAMS:

19          Q     Okay. So one of the City officers -- it  
20 may be Lewis -- has got his gloved hand on  
21 Rodriguez's head?

22          A     And then another glove -- another hand is  
23 on his left shoulder.

24          Q     Do you know who that -- whose hands -- I  
25 know it's hard to say.

1           A     It could very well be the same --

2           Q     Obviously, it looks like Lewis because the  
3 body-cam video is down right on it, so it's from his  
4 camera.

5           A     But that looks like Lewis's watch maybe on  
6 his left wrist.

7           Q     Uh-huh.

8           A     See the watch band right in front of us?

9           Q     Right. Yeah.

10          A     And then maybe that's Lewis's right hand  
11 pushing his head down.

12                   So another officer clearly has his hand on  
13 his -- on Fernando's left shoulder.

14          Q     Shoulder there?

15          A     And then Phillips still has his knee in  
16 his back.

17          Q     Right. Yeah.

18                                (Video played.)

19                                (Video stopped.)

20 BY MR. WILLIAMS:

21          Q     All right. Now you see --

22                   So you can see there that Phillips's knee  
23 is several inches away from Fernando's neck and  
24 head; correct?

25          A     Now it looks like his knee is further over



1 the right scapula than over the center of the back.

2 Q Here's his shoulder. Here's his head.

3 And then the knee is way up in this area; right?

4 A To me, from this image, it looks like the  
5 should -- the knee is not midline over the spine  
6 anymore.

7 Q Which way do you think it's moved?

8 A It looks like it's more on the -- over the  
9 right shoulder than in the center of the back. I  
10 mean, it's very hard to tell.

11 MR. WILLIAMS: And, for the record,  
12 we're looking at timestamp 22:25:43.

13 All right.

14 (Video played.)

15 A And, see, there was a --

16 (Video stopped.)

17 BY MR. WILLIAMS:

18 Q There's another good view that shows that  
19 Phillips's knee is several inches away from  
20 Fernando's neck and head; correct?

21 A Yes, but it also looks like there's a  
22 whole lot of pressure being applied to that knee to  
23 Fernando's body.

24 Q And you can also see that Fernando is  
25 picking up his head and moving his head around;

1 correct?

2 A But it's also being restrained by, I  
3 guess, Officer Phillips -- or Officer Lewis.

4 Q And that's timestamp 22:26:03,  
5 approximately.

6 (Video played.)

7 (Video stopped.)

8 BY MR. WILLIAMS:

9 Q Okay. Do you hear them say they could see  
10 the -- or couldn't see or could see the blue lights?

11 A I'm assuming they were talking to the  
12 para -- about the paramedics.

13 Q Yeah.

14 A Yeah.

15 Q Had you heard that they actually  
16 arrived -- went to -- the wrong direction and had to  
17 come back to where they were?

18 A I've seen all the delays possible,  
19 Counselor.

20 Q Yeah.

21 A I mean, it's -- people get the wrong  
22 address or they -- yeah. It's unfortunate.

23 Q So the officers are trying to get them to  
24 the correct location at that point, it appears?

25 A Yes.

1 (Video played.)

2 (Video stopped.)

3 BY MR. WILLIAMS:

4 Q You agree at 22:27:14, approximately a few  
5 seconds before that, that Officer Butera and  
6 Officer Phillips are looking intently and watching  
7 Fernando Rodriguez?

8 A Yes. They're a foot and a half away from  
9 him. They're faced Fer --

10 Q And they're watching him; right?

11 A Yes.

12 (Video played.)

13 (Video stopped.)

14 BY MR. WILLIAMS:

15 Q And these officers during this time frame  
16 are talking about what EMS may be able to do for  
17 Rodriguez?

18 A Correct.

19 Q Right? Doesn't that indicate they have  
20 concern for him and his condition?

21 A No.

22 (Video played.)

23 (Video stopped.)

24 BY MR. WILLIAMS:

25 Q Okay. 22:27:36/37, Officer Butera, who's

1     been watching him, says "his pulse rate is through  
2     the roof"; correct?

3             A       Correct.

4             Q       Okay.

5                             (Video played.)

6                             (Video stopped.)

7     BY MR. WILLIAMS:

8             Q       And that's -- and then you hear him  
9     question about "are you breathing, brother."

10                    Correct?

11            A       Correct.

12            Q       All right.

13            A       He doesn't answer.

14            Q       That's the first time there's been any  
15     indication that they noticed any difficulty in him  
16     breathing, correct --

17            A       The first time --

18            Q       -- the officers?

19            A       Yes.

20            Q       The first time they've --

21            A       Yes.

22            Q       And that was at 22:27:42, approximately.

23                             (Video played.)

24                             (Video stopped.)

25

1 BY MR. WILLIAMS:

2 Q Okay. So then a few seconds after that,  
3 Officer Butera actually stands up off of him, and  
4 Stroud says "don't relax on him too much."

5 Right?

6 A Correct.

7 Q And Butera puts his foot, I think, down on  
8 his lower leg area to -- just to hold him. Is  
9 that -- you can't really see it from there.

10 Is that what you understood he did?

11 A Yes. And I would have expected him to  
12 have done something different.

13 Q Let's see what we've got here.

14 (Video played.)

15 (Video stopped.)

16 BY MR. WILLIAMS:

17 Q All right. At 22:28:00 or 01, officer  
18 says "he's quit breathing."

19 A Correct.

20 Q Do you know who that was --

21 A No.

22 Q -- who said that?

23 (Video played.)

24 A And this is where I would have expected  
25 Officer Butera to have done something different.

1 (Video stopped.)

2 BY MR. WILLIAMS:

3 Q He knows that EMS is right there and is  
4 coming down to take a look at Rodriguez; correct?  
5 He's even looking at them right now?

6 A Yes, but he's medically trained to make an  
7 initial assessment. And I would have expected  
8 Butera to move to Fernando's head to check his  
9 breathing, to check his heart rate and his carotid  
10 artery.

11 (Video played.)

12 (Video stopped.)

13 BY MR. WILLIAMS:

14 Q Okay. You recognize that a medic has  
15 arrived and now an officer, Stroud or -- I think  
16 it's Stroud -- talking to them?

17 A Yes.

18 Q Okay. The medic didn't go over and start  
19 checking on Rodriguez right away?

20 A And I think that's a direct consequence of  
21 what Stroud told him of he's playing possum and the  
22 fact that --

23 Q So would you believe, then --

24 Normally, a medic who comes up to the  
25 scene should immediately go and check somebody

1 they've been called to check out; right?

2 A Agreed.

3 Q And you think he didn't because of what  
4 Stroud said to him?

5 A Yes, and the fact that nobody was doing  
6 anything medically for him.

7 (Video played.)

8 (Video stopped.)

9 BY MR. WILLIAMS:

10 Q So he didn't tell him he was playing  
11 possum until, it looked like, about 15 seconds or  
12 more after EMS --

13 A Correct.

14 Q -- medic arrived; right?

15 A Correct.

16 (Video played.)

17 (Video stopped.)

18 BY MR. WILLIAMS:

19 Q Do you hear one of the officers say  
20 they're scared to touch him?

21 A Yes. And I also observed Officer Butera.  
22 He transitioned to Fernando's head and stood on his  
23 hands.

24 Q No. He's standing on the handcuffs. We  
25 can look at it again. In fact, the City officer

1 asked him to take over for him right there.

2 Did you not hear that?

3 A But I would --

4 Q He put his foot down --

5 Because EMS are there at that point;  
6 right?

7 A Well, they're on scene. They're not there  
8 providing patient care.

9 Q But they're standing right there near  
10 where the officers are; right?

11 A They're on the scene. They're gathering  
12 their equipment, but they're not -- they're not --

13 (Video played.)

14 (Video stopped.)

15 BY MR. WILLIAMS:

16 Q So you see they're standing on the  
17 handcuffs; correct?

18 A And I see -- I see Fernando's left hand  
19 under that pile of handcuffs. That's what I see.

20 And I would expect Officer Butera to be on  
21 his hands and knees turning Fernando on his back  
22 opening his airway, checking his breathing -- airway  
23 breathing circulation.

24 Q Even though the medics are present?

25 A The medics are on the scene, but they're



1 not present at Fernando's side. Even though --

2 Q They were just talking to them right there  
3 beside the officers.

4 A They've arrived --

5 The medics have arrived on scene, but  
6 things don't happen instantly. They're gathering  
7 their equipment, and they're on the way, as they  
8 will in just a moment, to provide medical care for  
9 Fernando.

10 But Officer Butera is one of two medically  
11 trained First Responders, and they're CPR-certified.  
12 None of that was provided.

13 (Video played.)

14 (Video stopped.)

15 BY MR. WILLIAMS:

16 Q And that's 22:30:08, the EMS tapping on  
17 him?

18 A Yeah. That's probably a para -- a  
19 firefighter or paramedic's boot right there --

20 Q Yeah, right, right.

21 A -- yes, where they're trying to shake and  
22 shout.

23 (Video played.)

24 BY MR. WILLIAMS:

25 Q They're not attempting any CPR or

1 attempting to see if he's breathing at that point?

2 A Well, that's all -- you know, the shake  
3 and shout will determine what his level of  
4 consciousness is.

5 Q Um-hum.

6 BY MR. WILLIAMS:

7 Q All right. At this point, obviously, EMS  
8 has taken over as far as trying to figure out what's  
9 going on with him; correct?

10 A Correct. They're making their assessment.

11 Q All right. And we'll stop it.

12 (Video stopped.)

13 COURT REPORTER: I'm sorry. I didn't  
14 hear you.

15 THE WITNESS: They're making their  
16 assessment.

17 MR. WILLIAMS: All right. I need to  
18 take a short bathroom break.

19 MR. JOHNSON: Okay.

20 MR. WILLIAMS: And that's all we're  
21 going to do with the video.

22 (Whereupon, there was a recess  
23 in the deposition from 2:52 p.m.  
24 to 2:57 p.m.)

25 MR. WILLIAMS: We're back on.

1 BY MR. WILLIAMS:

2 Q Dr. Lowe, would you agree that someone who  
3 has actually conducted studies, researched on the  
4 theory of compression or positional asphyxia would  
5 be more qualified to offer an opinion as to whether  
6 body weight on a person's back in the prone position  
7 could cause compressional asphyxia than you would  
8 be?

9 A Yes.

10 Q You were not able to determine, obviously,  
11 what Fernando Rodriguez's percentage of oxygen  
12 intake was during the physical restraint in the  
13 prone position?

14 A The exact percentage?

15 Q Yeah, what oxygenation he had.

16 A No.

17 Q And you are aware that there was no  
18 evidence of any rib fractures to Fernando Rodriguez  
19 noted on the autopsy?

20 A I didn't see the autopsy report.

21 Q Oh, you didn't? Okay.

22 Are you aware that typically in crush-type  
23 of compressional asphyxia, there's usually evidence  
24 of internal injuries such as rib fractures, other  
25 type of trauma to internal organs associated with

1 it?

2 A Would you repeat the question, please?

3 Q Are you familiar with the fact that in  
4 compressional asphyxia situations such as a car  
5 falling on someone, somebody getting squeezed in  
6 machinery as you've discussed, there's typically  
7 evidence of internal damage such as rib fractures  
8 and other type of trauma?

9 A I don't know that it's always true,  
10 though.

11 Q But you haven't done any study? You're  
12 not qualified to offer an opinion about that?

13 A I haven't done any studies on compression.

14 Q Are you aware of Rodriguez having any  
15 internal injuries at all during this incident?

16 A Just the fact that his heart and lungs  
17 stopped working.

18 Q How do you know his lungs stopped working,  
19 first of all?

20 A Well, the paramedics -- he's not  
21 breathing.

22 Q Well --

23 A So his lungs have stopped working.

24 Q His lungs stopped work -- he stops  
25 breathing --

1           A       A person stops breathing when they go into  
2 cardiac arrest and their heart starts -- stops  
3 beating; correct?

4           A       Sometimes you go into respiratory arrest,  
5 and then your heart stops.

6           Q       You don't know which one occurred here, do  
7 you?

8           A       I do not know which one occurred first.

9           Q       Okay.

10          A       I know they both eventually occurred.

11          Q       Pretty much everybody that dies heart  
12 stops beating and --

13                   Right?

14          A       Correct.

15          Q       -- whatever the cause is? All right.

16                   I have just a few things I want to go  
17 through I have marked up on this other report that I  
18 now have.

19          A       Yes, sir.

20          Q       All right. In your report, Page 5 --  
21 let's see -- Incident Overview. You put that on  
22 September 22nd, 2019 --

23                   Is that your understanding of the date  
24 this incident occurred?

25          A       That's a typo. It's September 20th.

1 Q Okay. On Page 6 of your report --

2 A Can I refer to my report?

3 Q Yeah. Oh, yeah.

4 A Okay.

5 Q I'm assuming you would do that.

6 A Okay.

7 Q Page 6 of your report, under the Incident  
8 Timeline and Participants Activities, you state  
9 that, the second sentence: Officers Lewis and  
10 Stroud arrived almost simultaneously and both  
11 officers took the exact same actions at seeing a  
12 naked male walking in the middle of a virtually  
13 deserted public street.

14 Where do you come up with this notion that  
15 it was a virtually deserted public street?

16 A Well, it was virtually deserted compared  
17 to me working for the City of Roswell Police  
18 Department. I saw one car driving north, I guess,  
19 and one car that stopped south. I saw --

20 Q So if you only see a couple of vehicles,  
21 if you're in Roswell, you think that's virtually  
22 deserted?

23 A Yeah. That's right in the middle of  
24 COVID.

25 Q Okay. But you do -- that was my point.

1           You do note that there are vehicles that  
2 are in the area.

3           In fact, that's how 9-1-1 was called, was  
4 motorists that were in the area on that street;  
5 correct?

6           A     Yes.

7           Q     And then there was the motorists that were  
8 stopped because of what was going on; correct?

9           A     Correct.

10          Q     All right. In the -- let me see -- third  
11 full paragraph of Page 7 --

12          A     Yes.

13          Q     -- you state that -- in the third --  
14 well -- second sentence but starting at the end of  
15 the third line: Fernando had received 25 seconds of  
16 electricity within a one-minute-and-five-minute  
17 [sic] period.

18                And is that just from your observation of  
19 what you see and hear from the Lewis video?

20          A     Yes.

21          Q     Okay. Because, as you stated before, you  
22 haven't reviewed the pulse graphs or TASER downloads  
23 from any of the tasers used in the incident;  
24 correct?

25          A     I don't -- no, no.

1           Q     Okay. Fortunately, it looks like we've  
2 discussed everything that I've been making notes on,  
3 so I think we're -- so let me -- I'm still going  
4 through it here.

5           All right. Let's go down to Page 12 of  
6 your report. I just want to clarify. On Page 12  
7 you have an image embedded taken from the Lewis  
8 body-cam video. And in that below the image, you  
9 put that the "BWC image showing Phillips' left knee  
10 on Fernando's back between shoulder blades and  
11 neck." And you go on to state: The TASER X2 armed  
12 pressed in Fernando's lower back above his buttocks.

13           Right?

14           A     Yes.

15           Q     You do not state that the knee is  
16 anywhere -- is not -- is on the neck; correct?

17           A     From this image it's hard to tell because  
18 I just don't know how his hips are angled, that part  
19 of his lower leg may be on the neck, as well.

20           Q     But you didn't see that when we watched  
21 the video.

22           We never saw an image of his knee being on  
23 the neck; correct?

24           A     Again, it's in very close proximity to the  
25 neck.



1           Q     You would agree that Butera's right foot  
2     being pressed down on Fernando's left calf region  
3     would not have any effect on his ability to breathe?

4           A     Correct.

5           Q     What do you characterize as passive  
6     resistance from a subject?

7           A     So passive resistance is exactly that.  
8     They're not trying to strike the officer or kick the  
9     officer. They're just simply not complying.  
10    They're sitting there not complying.

11          Q     They're not being physically resistive, in  
12    other words?

13          A     No.

14          Q     That's correct?

15          A     They're just not doing what the officers  
16    asked them to do. They're just -- they're not doing  
17    what they were told.

18          Q     If there's physical resistance, shoving,  
19    pushing, that kind of thing, that's active  
20    resistance; correct?

21          A     Yes, if it's done with the intent for the  
22    officers -- against the officers. But just moving  
23    around, no.

24          Q     All right. And I know I may be somewhat  
25    beating a dead horse. We've already discussed it,

1 but I just want to -- because for some reason I keep  
2 seeing this.

3 But Page 34, when you get down in your  
4 bullet points under conclusions and opinions, No. 6,  
5 second sentence --

6 Are you with me?

7 A Yes.

8 Q Second sentence says: Fernando's ability  
9 to inhale and exhale was further compromised by  
10 having multiple officers kneeling on and compressing  
11 his head, neck, torso and limbs onto the pavement.

12 Again -- we went through this with the  
13 video, but the only officer that's ever seen that we  
14 can tell on the video, I believe, is  
15 Officer Phillips, who's actually putting a knee on  
16 Rodriguez's torso -- upper back and torso; correct?

17 A And, again, it's in -- it's in -- if it's  
18 not on the neck, it's in very, very close proximity.  
19 It's -- I can't tell --

20 Q I know. But, first of all, it is only  
21 Rodriguez [sic] who's got a knee up in the upper  
22 back?

23 A Phillips.

24 Q I mean Phillips. Did I say Rodriguez?  
25 Yes.

1                   Phillips; correct?

2           A       Phillips is the only officer I observed  
3 who had pressure on the torso --

4           Q       Right.

5           A       -- beyond hands.

6           Q       And you mentioned neck there, and that's  
7 what I'm concerned about.

8                   But you agree that there's -- haven't seen  
9 any image clearly showing that he had his knee ever  
10 on his neck area?

11                   You call it proximity of the neck, which  
12 is -- still can be upper back.

13           A       If it's not on the neck, it's in close  
14 proximity. The images that we see are either  
15 blocked by an arm or another body part or shadows or  
16 the lighting.

17                   I don't know how wide Phillips's knee is,  
18 but it's all right there.

19           Q       Well, what's the -- what's the  
20 significance of any knee pressure ever being at the  
21 neck, anyway, to you?

22           A       To me it's a difference without a  
23 distinction. There was still significant body  
24 weight applied to his upper back, maybe his neck;  
25 but he was not able to inhale to oxygenate his body.

1           Q     You don't contend that there was any  
2 cutting-off of his air supply through the windpipes  
3 traveling through his neck area; correct?

4                     Do you know what I'm talking about?

5           A     The trachea.

6           Q     You can asphyxiate somebody by basically  
7 cutting off their wind.

8                     You're not contending that that occurred;  
9 correct?

10          A     My assessment is, is Officer Phillips's  
11 knee on the upper back in close prox -- if not on  
12 the neck or in close proximity made it impossible  
13 for Fernando to take deep breaths and get oxygen  
14 into his lungs. And the cumulative effect was, he  
15 went from screaming to not -- to talking less loud,  
16 to grunting, to not doing anything in a period of  
17 about four minutes or so.

18          Q     You're talking about basically compression  
19 on chest or torso; correct?

20          A     That made it impossible for him to  
21 breathe.

22          Q     Yeah. I'm just trying to clarify, just if  
23 you'd work with me here. I'm just trying to  
24 clarify.

25                     You're not claiming they cut his wind

1 supply off around his neck?

2 A No.

3 Q All right. Can you cite to any scientific  
4 study that has verified that body-weight pressure  
5 from one person through application of one knee on a  
6 person's back can produce or cause positional  
7 asphyxia?

8 A No.

9 Q You cite to this 1995, almost a  
10 30-year-old, document from the Department of Justice  
11 about possible positional asphyxia; right?

12 A And there have been others since then.

13 Q Do you know that the study that that was  
14 based on is actually later rebunked by -- or  
15 debunked by its own author?

16 Were you aware of that?

17 A I'm not aware.

18 Q Okay. Do you know what excited delirium  
19 is?

20 A Yes.

21 Q What is that?

22 A It's a true medical emergency where  
23 people, for a variety of different causes, such as  
24 drug use, psychotic illnesses, can become out of  
25 control, crazy, breaking windows, have elevated body

1 temperature. It's a true medical -- it's a -- it's  
2 a true medical emergency.

3 Q Do you think that excited --

4 Have you seen instances of excited  
5 delirium in patients you were involved with or  
6 subjects you were involved with as an EMT/medic --

7 A I have.

8 Q -- paramedic?

9 A Yes, sir.

10 Q Did you see any that died from being in a  
11 state of excited delirium?

12 A They may very well have died in the  
13 emergency room long after I had departed, but I  
14 don't specifically remember any who died.

15 Q Okay. Have you seen literature or  
16 received any instruction or training that excited  
17 delirium in conjunction with heart disease and drug  
18 use could cause cardiac arrest and death?

19 A Yes.

20 MR. WILLIAMS: All right. Let's see.

21 I'm about finished.

22 BY MR. WILLIAMS:

23 Q Did you note, when you listened to the --  
24 and watched the video, that the officers talked  
25 about how Fernando Rodriguez was demonstrating

1 extraordinary strength?

2 A I heard them say that.

3 Q And it was hard for them to hold on to him  
4 and hold him down?

5 A Yes. I heard that.

6 Q Have you ever reviewed any research on  
7 crowd crush?

8 A No.

9 MR. WILLIAMS: All right. That's all  
10 the questions I have at this time.

11 MR. JOHNSON: I just have a few  
12 questions for you.

13 THE WITNESS: Yes, sir.

14 EXAMINATION

15 BY MR. JOHNSON:

16 Q Dr. Lowe, I believe that counsel had asked  
17 you about whether it's a violation of TASER policies  
18 to TASER someone multiple times.

19 Do you remember that?

20 A Yes.

21 Q And I think you said no; right? It's not  
22 a violation?

23 A There's no exact number.

24 Q Well, it sounded like you wanted to  
25 expound on that or explain that answer.

1                   Was there anything else there?

2           A       So generally it's recommended 15 seconds  
3 of exposure. And then you need to start thinking  
4 about transitioning to other force options because  
5 if you tased them three times and it's not effective  
6 for a total of 15 seconds of electricity, then  
7 clearly it's not working.

8                   And so whether you use OC or a baton or  
9 de-escalate or wait for backup --

10                   But tasers are cumulative. The more often  
11 somebody gets tased, the longer the duration of  
12 exposures. Cumulatively generally makes things  
13 worse for the person.

14           Q       Okay. And is it your opinion that one of  
15 the County officers in this case used excessive  
16 force when it came to the tasers?

17           A       Yes. Officer Phillips, his last three  
18 TASER deployments I did not find objectively  
19 reasonable. We have a handcuffed person who's got  
20 two linked handcuffs on his wrists, leg chains on  
21 his ankles. He's stretched out prone. There's five  
22 officers holding him to the ground with either their  
23 hands, their feet or a knee.

24                   And every time Fernando, in my -- in my  
25 expert opinion, was pushing up to try to inflate --



1 to expand his rib cage so he could breathe, that  
2 Phillips drive-stunned him for just one or  
3 two seconds.

4 So he -- he had the TASER on the whole  
5 time staged in his back because you can see the LED  
6 display on the TASER X2 and the flashlight pressed  
7 in his back on the video. But there were three  
8 times where, when Fernando tried to push up to take  
9 a breath, that Phillips pulled the trigger but then  
10 turned it off after a second by turning the switch  
11 off; so that's why it was only a one- or two-second  
12 ride because Phillips turned it off early.

13 Q And did you say you reviewed the policies  
14 that were in place by Henry County Police Department  
15 regarding the use of tasers that were in effect at  
16 the time?

17 A I did review them.

18 Q Did you find those problematic at all?

19 A They didn't address many of the concerns  
20 that I observed in this as far as  
21 positional asphyxiate -- making sure that they're  
22 not in a prone position, making sure that you get  
23 them medical attention sooner rather than later.

24 Q Counsel was talking about a study  
25 involving 400 pounds of weight, or something along

1 those lines.

2 Have you ever read or heard that study?

3 A I have not.

4 Q Okay. In your opinion or in your  
5 training, can you kill someone with less than  
6 400 pounds?

7 A Absolutely.

8 Q And do you believe that's what happened  
9 here?

10 A Yes.

11 Q Regarding the use of excessive force as  
12 far as the prone position goes, what should have the  
13 officers done here?

14 A Are you talking about from the moment they  
15 arrived on the scene?

16 Q Well, when they got him into the prone  
17 position, from that point forward what should they  
18 have done differently, in your view?

19 A Once they got him in the prone position,  
20 got him handcuffed, leg-ironed, roll him over on his  
21 side, let one of the officers have their lower  
22 leg -- or their -- kneel down beside him and roll  
23 him back over on the officer's legs so that he can  
24 breathe, have an officer support his head so you  
25 take all the pressure off his diaphragm and chest

1 and hips and his --

2 It only makes it worse when you've got an  
3 officer pushing his face into the asphalt. So not  
4 only has he got a knee in his back, but he's got a  
5 hand pushing his face into the asphalt.

6 They should have turn -- they should have  
7 got him in the recovery position. Every one of them  
8 had CPR training, two of them whom, Stroud and  
9 Butera, were trained by the Georgia POST as First  
10 Responders, which is a 60-hour class on advanced  
11 first aid, but it talks about that recovery position  
12 and how important it is to get people off their  
13 stomach.

14 Q And what is the recovery position?

15 A The recovery position is when you turn  
16 them on their side, maybe pull their knees up to  
17 take pressure off the diaphragm and the stomach and  
18 support their head so that their head is not leaning  
19 over, if they can't control their head because  
20 they're either unconscious -- but support their  
21 head, keep their airway open.

22 Q Would you agree at some point that  
23 Mr. Rodriguez became unresponsive?

24 A Yes.

25 Q Okay. And at that point what were the

1 duties of the officers involved?

2 A To transition from restraint to  
3 resuscitation. They should have immediately --

4 I mean, there was a lot of discussion  
5 about I think he quit breathing, well, maybe he did,  
6 he's playing possum.

7 You know, the first time somebody said I  
8 don't think he's breathing, I would have expected  
9 one of the two officers who were field training  
10 officers, Butera and Stroud, to say let's check. If  
11 you don't think he's breathing or you think his  
12 pulse is fast and his blood pressure is fast or  
13 elevated, let's make an assessment.

14 You've got five police officers there.  
15 You've got an ambulance on the way. Nobody's at  
16 risk. It didn't take that -- it wouldn't have taken  
17 any time to make a determination. And maybe, had  
18 they done that, they could have started CPR  
19 immediately to restore his circulation and his  
20 airflow. And then they could have got on the radio  
21 and said, you know, advise the ambulance we're doing  
22 CPR on our patient now.

23 So the ambulance would already have been  
24 prompted, hey, we're not just rolling to a naked man  
25 in the street in City of Hampton, but now we're

1     responding to a cardiac arrest where the officers  
2     are telling us they're doing CPR.

3             I would expect the paramedics to have got  
4     off the ambulance faster with all the gear they  
5     needed so they didn't have to go back to the truck.

6             Q     At the point that Mr. Rodriguez became  
7     unresponsive, do you consider the knee on the back  
8     to constitute excessive force?

9             A     Yes.

10            Q     Why?

11            A     Because once he's become unconscious,  
12     what's -- what is the justification for the knee on  
13     the back? Not only is he leg-ironed and handcuffed,  
14     but now he's become unresponsive. And you're just  
15     continuing to apply more pressure.

16                   And Phillips literally doesn't take his  
17     knee off the back until the last few moments before  
18     the paramedics take over. Even -- so it was just  
19     that --

20                   It just seemed cumulative and excessive to  
21     continue to apply pressure to the back when he's  
22     already unconscious.

23            Q     And in your training and your experience,  
24     do you believe that that knee on the back could have  
25     killed him?

1           A     Yes.  And if I could offer this,  
2 Counselor.

3           Q     Of course.

4           A     Of all five officers on the scene, the one  
5 officer who had the most -- the -- one of the  
6 strongest parts of their body, their leg, and who  
7 was -- he's a good-size officer.  He's a young,  
8 stout officer.  He was -- he was the one who had  
9 primary body weight on Fernando's torso.  Other  
10 people had a hand or maybe two hands, but Phillips  
11 is the one who had dedicated body weight on --  
12 through his knee into Fernando's back.

13          Q     And you believe that his body weight  
14 constituted excessive force?

15          A     Yes.

16               MR. WILLIAMS:  Object to the form.  Now  
17 you're leading your own client -- your  
18 witness, I should say.  That's what's  
19 improper.

20               MR. JOHNSON:  Okay.

21 BY MR. JOHNSON:

22          Q     These officers, did they have the same  
23 amount of training and experience --

24          A     As -- no.

25          Q     -- as one another?

1           A     No.

2           Q     Who had the most training and experience  
3 of the County officers?

4           A     Butera.

5           Q     How much more?

6           A     A significant amount. He had been an  
7 officer for 14 years. He was a field training  
8 officer, so he was charged with the responsibility  
9 of training recruits. He was medically trained as a  
10 First Responder. He had crisis intervention  
11 training where you recognize people in a medical  
12 crisis and you have tools and techniques to manage  
13 them, one of which is de-escalation.

14                   Now, I recognize by the time that Henry  
15 County arrived, all the de-escalation was out the  
16 window because Hampton didn't use that.

17                   But Butera also was CPR-trained. He was  
18 trained on tasers. He had been re -- he had been  
19 recertified repeatedly. And part of that training  
20 is the Smart Use guidelines of don't continue to  
21 tase people when it's not objectively reasonable.  
22 And my assessment from his lower chevron and upper  
23 chevron, he was the highest-ranking Henry County  
24 officer on the scene.

25                   Phillips was one day short of his one-year

1 anniversary graduation from the academy. He's a --  
2 he's an inexperienced officer. And Butera had a  
3 responsibility, as the senior officer on the scene,  
4 to give him good advice.

5           Whatever the City of Hampton does --

6           And as a Clayton County Fire Department  
7 Battalion Chief, I interacted with all different  
8 types of agencies not part of Clayton County Fire  
9 Department. But when I committed Clayton County  
10 Fire Department resources and personnel, I had to  
11 factor in is what that agency was asking us to do as  
12 part of mutual aid, was it being done in compliance  
13 with our policies and our training. We weren't  
14 going to do --

15           Just because it was in the City of Morrow,  
16 if Clayton County came into the City of Morrow and  
17 Morrow was doing it bad, Clayton County is not going  
18 to play because we're not going to be a party to  
19 that.

20           And I would have expected Butera when he  
21 got there to have told Phillips to stop tasing him  
22 in the back just because he's pushing up. I would  
23 have expected Butera to have -- as a medically  
24 trained law enforcement officer, CPR-certified, to  
25 have got down and made -- checked his -- opened his



1 airway and checked for breathing and circulation  
2 instead of standing on his hands and looking  
3 longingly over his shoulder where's the ambulance.

4 Q Did Officer Butera have a duty to tell  
5 Officer Phillips to get off of Mr. Rodriguez?

6 A Yes.

7 Q And was the failure to do so a  
8 violation --

9 MR. WILLIAMS: Object to form.

10 BY MR. JOHNSON:

11 Q -- of his constitutional rights,  
12 Mr. Rodriguez's?

13 MR. WILLIAMS: Object to form, leading.

14 A Butera should have told Phillips to get  
15 off his back.

16 BY MR. JOHNSON:

17 Q Have you had a chance to review Henry  
18 County Police Department's use-of-force policies  
19 that were in effect at the time?

20 A Yes.

21 Q In your opinion, were those policies  
22 adequate to protect Mr. Rodriguez's constitutional  
23 rights?

24 A There were a lot of gaps. There were a  
25 lot of gaps, and we saw that with the revised policy

1 that was executed a year and a half later where they  
2 added a lot more definitions.

3 But it's one thing to write a policy and  
4 to publish it in the procedure manual. The real  
5 responsibility comes through the training, what's  
6 actually being done to provide that policy to the  
7 officers who operate in the field. That's where  
8 the re -- that's where the real responsibility is.

9 Q And what kind of training would you  
10 expect?

11 A I would expect exactly that, is that once  
12 you get some --

13 And this is not novice stuff. Once you  
14 get somebody restrained and they're in handcuffs and  
15 leg irons and you've got five officers on the scene,  
16 I would expect the amount of force needed would go  
17 down because you've got a person who is no threat to  
18 the officers, no threats to the public. They're not  
19 going anywhere.

20 And if for some reason this superstrong  
21 person breaks the handcuffs and starts flailing,  
22 then you have to deal with that -- with the amount  
23 of force that's reasonable.

24 But nothing changed. Once they got him  
25 handcuffed and restrained, they didn't stop applying

1 force. They continued. Force was still applied  
2 literally up until the moment they handed him over  
3 to the paramedics, where a moment before Stroud had  
4 said he's playing possum.

5 Q There was some discussion about CPR  
6 classes; right?

7 A Yes.

8 Q Do you know if these officers had received  
9 CPR training?

10 A I know that when I went through Basic  
11 Mandate, it was in my Basic Mandate class; but it's  
12 also noted on the officer's POST profile of when  
13 they got recertified in CPR.

14 Q And were these officers trained in CPR?

15 A Yes.

16 Q And what is the purpose of CPR?

17 A The purpose of CPR is to restore  
18 circulation and breathing to the body by applying  
19 chest compressions. And mouth-to-mouth has gone out  
20 of favor, but many officers carry breathing masks so  
21 you have the protection from infectious diseases.  
22 But many departments, such as Roswell, have  
23 automatic emergency defibrillators.

24 Q In your opinion, should the officers in  
25 this case have used CPR?

1           A     Yes.

2           Q     At what point?

3           A     At the point when it was made I don't  
4 think he's breathing, that's a clue. That's a clue  
5 that for the officers who are CPR-trained or Butera,  
6 who's a First Responder, then said, let me go to his  
7 head. That's where the important part is. I  
8 wouldn't expect him to stay at the feet and not move  
9 to the head.

10          Q     Is there anything else aside from CPR that  
11 you think they could have done?

12          A     After he stopped breathing?

13          Q     Right.

14          A     No, because you'll notice on the video,  
15 one of the first things the paramedics did or the  
16 firefighters is, they started doing chest  
17 compressions as soon as they put him on the  
18 stretcher.

19          Q     Did it appear to you about whether there  
20 was a delay between when the paramedics got there  
21 and when they actually were attending to  
22 Mr. Rodriguez?

23          A     There was.

24          Q     Do you know what that delay was for?

25          A     That's just a consequence of we're here.

1 You've got -- I'm assuming some of them got off a  
2 fire truck. And people will arrive at different  
3 times from the fire truck. The officer who sits in  
4 the front right seat will generally get off first.  
5 You'll have a firefighter who sits in the back.  
6 He'll get off with the officer. But the engineer,  
7 the person who drives the truck, he's got to -- he's  
8 got to set the parking brakes. He's got to chock  
9 the wheel so the fire truck won't roll a thousand  
10 yards down the street into a house or a ditch. And  
11 generally the engineer would stay with the truck.  
12 That's their assignment. And then the two  
13 paramedics, one of them is probably at the  
14 stretcher -- at the ambulance getting the stretcher  
15 and equipment while the other paramedic walks up and  
16 finds out what have we got. Well, we've got a  
17 person who's playing possum, or whatever the  
18 dialogue was that --

19 So there was a delay, but that's the  
20 reality of the job. It doesn't -- they just don't  
21 parachute in and immediately have all their  
22 equipment right in front of them. They have to go  
23 get it. I mean, it's all in different parts of the  
24 ambulance.

25 Q And so who's responsible for the patient

1 or the detained individual while the paramedics are  
2 getting their items ready?

3 A And what I would say is, as soon as the  
4 paramedic -- whichever -- whoever was in charge of  
5 the scene, the highest-ranking medically trained  
6 person, the paramedic.

7 And I would say that once that paramedic  
8 walked up and put eyes on Fernando, that he should  
9 have made an assess -- he should have made a medical  
10 assessment right there and not simply depend upon --  
11 especially when you can visually look at him and say  
12 that don't look good to me.

13 I mean, normally I would expect, when  
14 somebody is in handcuffs surrounded by a bunch of  
15 officers, somebody is going to be screaming and  
16 cussing. And to see somebody who's proned out and  
17 you can -- I can see on the video the injuries to  
18 his back from him crab-crawling across the asphalt.  
19 I just would have --

20 And I would have expected the paramedics  
21 to have -- to have made an assessment before they  
22 just went back and got the stuff out of the  
23 ambulance, in a -- in a perfect world.

24 Q And just to be clear on this -- I don't  
25 know if I touched on this -- in your training and

1 your experience, can a knee on the back while  
2 someone's in the prone position cause someone to  
3 receive inadequate oxygenation?

4 A Yes.

5 Q And do you believe that's what happened  
6 here?

7 A I'm certain that's what happened.

8 MR. JOHNSON: That's all I have. Thank  
9 you.

10 MR. WILLIAMS: All right. Dr. Lowe, I  
11 have a few more questions.

12 FURTHER EXAMINATION

13 BY MR. WILLIAMS:

14 Q First of all, are you aware that Fernando  
15 Rodriguez was not handcuffed in a secure way because  
16 of the way his -- I think it was his right hand that  
17 only had a couple of fingers, was smaller than the  
18 left?

19 A No.

20 Q You weren't aware they couldn't get  
21 handcuffs on him properly because of that?

22 A No.

23 Q You weren't aware they had to use two sets  
24 of handcuffs to connect together and that was why  
25 they were standing on that pile of handcuffs?

1                   You weren't aware of that?

2           A       That was not my assessment --

3           Q       Okay.

4           A       -- of how they got two handcuffs together.

5           Q       So if that being the case, they didn't get  
6 him properly handcuffed, if they had just let him  
7 go, then he might have been able to swing and do the  
8 things he had done previously; correct?

9           A       No.

10          Q       He could have tried to crawl away using  
11 his arms?

12          A       No.

13          Q       You don't think so with two sets of --

14          A       I think he was properly handcuffed.

15          Q       -- handcuffs? Oh. You don't -- you think  
16 still --

17          A       I do.

18          Q       Oh, okay. So you're not familiar with  
19 that?

20          A       I mean, he never --

21          Q       That's fine.

22          A       -- pulled a hand out.

23          Q       Well, they never let him pull a hand out  
24 if they got those cuffs on him and stood on the  
25 cuffs; right?



1           A     Well, he wouldn't have had the opportunity  
2 with a foot on his hand --

3           Q     Right.

4           A     -- inside the cuffs.

5           Q     That's why they kept it on there so he  
6 wasn't having the opportunity to continue to try to  
7 resist; right?

8           A     But they were even doing that where he was  
9 unconscious.

10          Q     Okay. You recognize that Rodriguez had  
11 resisted for a long period of time when the City  
12 officers were trying to get him to get on the ground  
13 and then trying to get him to roll over after they  
14 used the tasers on him; correct?

15          A     He was not compliant.

16          Q     For a long period of time?

17          A     Some period of --

18          Q     Eight or ten minutes; correct?

19          A     I don't think it was that long.

20          Q     From the time the City officers first  
21 arrived 'til they got him down onto the ground and  
22 secured in the handcuffs, to the extent they could?

23          A     The over --

24                 A lot of the time Fernando was just  
25 sitting there when they were giving the commands to

1 get on the ground, but he clearly was not complying.  
2 And my assessment is, it's because he was having a  
3 medical emergency.

4 Q Obviously, the City officers were  
5 concerned that he might start resisting or being  
6 combative again by the comments that they made about  
7 him, you know, playing possum, you know, don't let  
8 up the pressure, those kind of comments.

9 Would you agree with that?

10 A That was their assessment.

11 Q And that -- those comments were around the  
12 time that you have said that he -- Rodriguez could  
13 have been experiencing a lack of breathing,  
14 sufficient oxen -- oxygenation; correct?

15 A Correct.

16 Q And you've already indicated now that  
17 Officer Phillips was a fairly inexperienced officer;  
18 correct?

19 A He was.

20 Q So an inexperienced officer like  
21 Officer Phillips, hearing these City officers saying  
22 that this individual could be faking it, could be  
23 playing possum would give him reason to continue to  
24 hold him, at least put some pressure on his back, to  
25 make sure he didn't become combative again; correct?

1           A     No.

2           Q     Okay.  You agree that those statements  
3 were made by the City officers, right, about him  
4 playing possum, don't let up the pressure --

5           A     I heard them say that.

6           Q     -- that sort of thing?

7           MR. WILLIAMS:  Okay.  That's all.

8           Thank you.

9           THE WITNESS:  Thank you very much.

10          MR. JOHNSON:  Okay.  I think we're  
11 done.

12          COURT REPORTER:  Copies of the  
13 transcript?

14          MR. WILLIAMS:  Yeah.  I want to get  
15 just our usual, electronic, condensed and  
16 everything, just all electronic but that --  
17 all of those formats.

18          MR. JOHNSON:  I'll get a hard copy, as  
19 well.

20          (Pursuant to Rule 30(e) of the Federal Rules of  
21 Civil Procedure and/or O.C.G.A. 9-11-30(3), signature of  
22 the witness, WILLIAM A. LOWE, has been reserved.)

23

24                 (Deposition concluded at 3:40 p.m.)

25

- - -

# ERRATA SHEET

I, WILLIAM A. LOWE, the witness herein, have read the transcript of my testimony and the same is true and correct to the best of my knowledge.

\_\_\_\_\_ There are no corrections.

\_\_\_\_\_ Any corrections/additions are listed below.

PAGE/LINE

**SHOULD READ**

**REASON**

WILLIAM A. LOWE

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**Notary Public.**

My commission expires \_\_\_\_\_.

## C E R T I F I C A T E

STATE OF GEORGIA:  
HENRY COUNTY:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to printing under my direction; that the foregoing pages 1 through 178 represent a true and correct transcript, to the best of my ability, of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Pursuant to Article 10.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia and O.C.G.A. 15-14-37 (a) and (b), written disclosure is attached herein.

This, the 25th day of July, 2022.

MARY K. CALDWELL, CSR, B-1325  
Certified Shorthand Reporter  
Certification expires 3/31/23

## 1 DISCLOSURE

2 STATE OF GEORGIA:  
3 COUNTY OF HENRY:

4 DEPONENT: WILLIAM A. LOWE

5 Date of Deposition: June 28, 2022

6  
7 Pursuant to Article 10.B. of the Rules and  
8 Regulations of the Board of Court Reporting of the  
9 Judicial Council of Georgia, I make the following  
10 disclosure:

11 I am a Georgia Certified Court Reporter. I am  
12 not disqualified for a relationship of interest under the  
13 provisions of O.C.G.A. 9-11-28(c).

14 I am here as a representative of Precision  
15 Reporting, Inc.

16 Precision Reporting, Inc., was contacted by  
17 Thompson Reporting Services to provide court reporting  
18 services for this deposition.

19 Precision Reporting, Inc., will not be taking  
20 this deposition under any contract that is prohibited by  
21 Georgia law.

22  
23  
24 Mary K. Caldwell, CSR B-1325  
25 Certified Shorthand Reporter  
Certification expires 3/31/23

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**(13) onto - Plaintiffs'**

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